

Enterprise Agreement 4.1 Field Guide

June 23, 1999

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Important Note: The Enterprise Agreement Field Guide is for Microsoft internal use only. Under NO circumstances should you give any part of the Guide to customers or channel partners. The Guide contains information that is confidential in nature and is absolutely **NOT** customer- or channel-ready.

Approval Level	Approver
GREEN	CAM (or equivalent) level approval required.
YELLOW	GM (or equivalent) level approval required.
RED	VP (or equivalent) level approval required.
BLACK	This exception will not be approved under any circumstances.
NONE	Consult your Business Desk contact for any discussion.

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Section A

Section A

Introduction

Reference List of Exceptions

Green Exceptions		Red Exceptions
Please consult Agreement guide for details – overview below ONLY.		Please consult Agreement guide for details - overview below ONLY.
C-2	Price discount of 0% to 10%	C-2
D-14	Ramp invoices	C-15
D-14	Split first year payments	C-17
C-6	Multiple language blending	C-16
D-60	Modify applicable law/venue (see handbook for options)	C-16
C-17	Include certain Select products in the deal (e.g., Servers)	C-14
D-22	Adjust number of training center copies up to 100	C-18
D-4	Include clause on product names	C-9
C-8	Reduce first EA payment for unexpired portion of maintenance contract	
D-3	Less than full platform	
D-17	Items below for <u>DEPTH only - not for BREADTH</u> Include divestiture language	
Yellow Exceptions		Other Issues
Please consult Agreement guide for details - overview below ONLY.		Please consult Agreement guide for details - overview below ONLY.
C-2	Price discount between 11% to 20%	C-2
D-17	Additional divisional rollout (see Business Desk contact)	C-13
D-12	Include divestiture language	C-19
D-52	Include true down language	C-21
D-51	Extend cure period to 60 days	C-10
	Allow a 2-year term extension instead of a 1-year extension	C-12
D-43	Items below for <u>DEPTH only - not for BREADTH</u> Modify limits of liability	C-21
		C-22

Section A

Introduction

Introduction

How to Use This Guide

This guide is intended to be a tool to help you understand and negotiate Enterprise Agreements. It contains material that will help you explain to a customer what some of the terms in the Enterprise Agreement means and why they contain some of the standard provisions they do. The materials will also help you anticipate common customer objections and common requests for changes in the terms and conditions, and position responses to those objections and requests. Finally, the materials include pre-approved alternative provisions that can be used to help you close deals where the situation requires them.

You will note as you use the guide that the number of pre-approved alternative provisions is limited. For some provisions there are no approved alternatives, and for others only one or two. This is a function of several considerations. A pre-approved alternative is possible and appropriate only when:

- The issue is common to a large number of customers
- There is a common resolution of the issue that will satisfy most customers concerned with it
- The common resolution establishes an allocation of risk or obligations that Microsoft feels it can live with

If the customer's issue is not unique but you cannot find a pre-approved alternative that satisfies the request, it is likely that a standard response may not be appropriate. We have tried to identify those issues in the guide. If a customer has a unique issue, or if it requires a unique resolution, the pre-approved alternatives in this guide are less likely to provide a solution. In those cases, you will need to involve your Business Desk contact to help you in determining whether a more customized solution is possible.

IF A PRE-APPROVED ALTERNATIVE IS NOT INCLUDED IN THIS GUIDE, NO CHANGE MAY BE MADE TO THE AGREEMENT WITHOUT THE EXPLICIT AUTHORIZATION OF YOUR BUSINESS DESK REPRESENTATIVE. NON-STANDARD REVISIONS TO AGREEMENTS WILL BE PREPARED FOR YOU AFTER APPROVAL BY THE BUSINESS DESK.

A cautionary note about the pre-approved alternatives: If you make all of the pre-approved concessions too quickly and too easily, you may move the starting point for the rest of your negotiation. Many negotiators believe that they have "left something on the table"—that they haven't done their job—if they haven't heard the word "no" from the vendor - or if they haven't had to work hard for any of the concessions. If you treat the pre-approved alternatives as items of little or no value to the customer (evidenced by giving away too many, too easily), your customer will likely also view them as having little value. Remember, too, that each pre-approved alternative has a required authorization level. The authorization level is tied, generally, to the cost or exposure we think we see in the concession. Where the guideline to a particular concession requires approval, you must obtain that approval in each instance where you want to make it: the fact that the same concession was approved in a different negotiation in a different deal does not mean that we should necessarily do so in other deals.

This guide contains a great deal of Microsoft confidential information. Treat it with care. A large part of the value of this guide is in the negotiating flexibility it provides you through the pre-approved alternative provisions. Smart use of those alternatives will help you satisfy customers and close deals. If your customer knows that your "flexibility" comes straight from a pre-approved menu, it is likely that they will appreciate the flexibility less and look for additional concessions that make them feel "special", specifically because they do not come from the guide. In that case, the guide will do little to speed up the process or to increase the satisfaction of your customer. Please help preserve the value of the guide by holding it in confidence. **Under no circumstances should this guide be shown to (or its existence be disclosed to) any customer or LAR or any other person outside of Microsoft. Violation of this obligation of confidentiality will be reported to management.**

The guide consists of five parts:

- (1) this introduction;

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- (2) a collection of indexing tools that will help you find the specific explanations, positioning and pre-approved alternatives you are looking for;
- (3) a discussion of common customer requests regarding business issues that may effect the terms and conditions of the Enterprise Agreement;
- (4) an annotated version of the Enterprise Agreement (including attached forms) and
- (5) an annotated discussion of the Channel Price Sheet

In many ways, Section C (the indexing tools) is the most important part: you have to be able to find the explanations, positioning and alternatives before you can use them. The substantive portions of the guide follow, as much as possible, the order of the Enterprise Agreement.

Some Reminders About Negotiation

In essence, the Select and Enterprise programs are vehicles through which a customer can license the same products that are available in the retail channel. If it isn't strictly true that "the license is the product", it is certainly true that it is an important part of the product. The objective is not to make available a different product in Select/Enterprise Agreements—neither different code, nor a different license—than is available in the retail channel. Rather, the objective is to offer the same products at better prices and with better convenience for our customers and with lower costs for all parties. For this reason, we do not agree to changes in the Product Use Rights and we strongly resist negotiating the provisions of the Select or Enterprise agreements that simply restate equivalent provisions in the End User License Agreements that we license through the retail channel.

Because the subject matter of this guide is intended to help you negotiate Enterprise opportunities, at the risk of telling you things you already know, it is worthwhile to take a few moments to remind you of some of the fundamentals of good negotiation.

- Understand the other side. Understand exactly what they are asking for, and why. If you do, you can frequently find a concession that addresses their real concern with a minimum of exposure for Microsoft.
- Understand both your and the other side's bargaining position. Most concessions have a cost in terms of either revenue, expense to administer and/or risk. Some of those costs are easy to understand, and others are more difficult. While we want to successfully close business and make our customers happy in the process, we do not want to give away value unnecessarily. The stronger our relative bargaining position, the less value you should have to give away.
- Set expectations early and accurately. If your customer is asking for something more than you can deliver, say so as early and as unequivocally as possible, give the strongest reasons you can think of, and really sell your position. If you string a customer along with the false hope that you might be able to give the desired concession, he or she will only be more disappointed when you are unable to deliver.
- Recognize "tactics". Sometimes a party to negotiations:
 - takes an extreme position primarily to leave bargaining room for a more reasonable middle ground
 - uses threats, rudeness, and/or hostility to intimidate
 - issues ultimatums
 - claims to lack authority

Of course, sometimes the hostility is real, and sometimes the authority is really lacking. If you take every ultimatum, every threat, etc. at face value, you will give up more value in negotiation than you need to. A valuable skill of negotiation is to know when you are confronting a tactic and when you are not. In some cases, you may want to give thought to what kinds of tactics may help you to close a deal on terms that are good for Microsoft.

Remember that empowerment in the negotiation arena carries with it the responsibility to know what you should concede, what the cost of each concession is, and when a concession is necessary and when it is not. Most importantly, empowerment carries with it the responsibility to say "no" when that is the appropriate response.

Section A

Introduction

Frequently Asked Questions

The following FAQs and responses may help you in responding to customers' general objections to our agreements and the concessions we will or will not agree to.

FAQ #1: Why can't Microsoft be more flexible?

Microsoft is flexible, especially where and to the extent it is prudent: where flexibility is necessary to help address a customer need or to win or keep business without creating unreasonable risk or expense. As with any responsible enterprise vendor, we have to balance flexibility with consistency and fairness in how we treat customers in similar situations (i.e., size, volume, level of commitment, etc.).

FAQ #2: Why are our agreements so long (and complicated)?

Microsoft has spent considerable time and effort to make the 4.1 agreements more user-friendly, so you shouldn't frequently encounter this complaint. However if you do, explain that the length and complexity of our agreements are appropriate to the detail and complexity in our licensing programs. Relative to the dollars involved and program complexity, our agreements aren't bad. (Compare this to a simple residential lease contract, or any standard purchase agreement.) As long as we try to maintain a program that is flexible enough to allow for the licensing of products for all affiliates in the "Lead Customer's" corporate family, we will need provisions that deal with each of those not even exist today, and the licensing of products for all affiliates in the "Lead Customer's" corporate family, we will need provisions that deal with each of those complexities. This version of the Enterprise Agreement is much shorter and less complex than its predecessor, and we will work in every future revision to make our agreements as short and simple as they can be while still addressing the substance that needs to be addressed.

FAQ #3: Our competition agrees to [blank]. Why don't we?

This is a difficult assertion to deal with. The truth is, we do not really know what concessions our competitors give in their deal-by-deal negotiations. Be cautious about blindly accepting a customer's assertions about what other vendors have agreed to. Don't be so sure about believing what the competition is giving---consider the source. Based on the forms we've seen, our agreements are "in the ballpark" on almost all issues. Even if we knew with certainty that a competitor routinely agrees to a concession we are reluctant to agree to, it still might not be a sensible concession for us to make. Each vendor makes its own decisions based on its own unique circumstances (e.g., a competitor with only 2 or 3 products might feel more comfortable making blanket Year 2000 warranties; a competitor with relatively low net worth might feel less uncomfortable taking on unlimited liability; a competitor with an extremely limited customer base may be more generous with both price and terms because it feels it has to be aggressive in order to expand or maintain its customer base).

If, after consulting this guide, you still have unanswered questions or unresolved issues concerning the negotiation of a Select or Enterprise Agreement, please contact the appropriate Business Desk contact.

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INDEX
Guide to Enterprise Agreement

<i>Term</i>	<i>Agreement Location</i>	<i>Issue</i>	<i>Guide Location (Section/Page)</i>	<i>Pre-Approved Alternatives</i>
Affiliate – Definition	Terms & Conditions – opening paragraph	Extension of EA benefits to entities they do not own.	Section D(1) – page 2	BLACK
Desktop Products - Definition	Terms & Conditions – opening paragraph	Less than full platform Component guarantee Additional products	Section D(2) – page 3 Section D(2) – page 4 Section D(2) – page 4	GREEN GREEN NONE (but concept is GREEN – see your Business Desk contact)
Enrolling Customer's Enterprise – Definition	Terms & Conditions – opening paragraph & Enterprise Sign Up Form	Include less than the entire corporate family	Section D(3) – page 5 Section C – page 19	NONE NONE
Qualified Desktop – Definition	Terms & Conditions – opening paragraph	Enlarge the hardware within the definition	Section D(5) - page 6	NONE
Enterprise License Acquisition	Section 1 & Reseller Information Form	Diminish the hardware within the definition Purchase direct from Microsoft Multiple LARs	Section D(6) – page 7 Section D(7) – page 8 Section C – page 12	NONE BLACK BLACK

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Term	Agreement Location	Issue	Guide Location (Section/Page)	Pre-Approved Alternatives
Enterprise License Acquisition (continued)	Section 1 & Enterprise Sign Up Form (pg 2 of 3) Section 1	Desire to utilize more than 10% of software in Restricted Languages Responsibility for affiliates	Section D(8) page 9 Section C - page 6 Section D(9) - page 10	NONE (but concept is GREEN - See your Business Desk contact) GREEN
Updating enterprise license coverage.	Section 1 Section 2	Discount on Variable purchases True Down Divestiture	Section D(10) - page 11 Section C - page 2 Section D(11) - page 12 Section D(14) - page 17	NONE (see Section C for expanded discussion) YELLOW YELLOW
Reference prices.	Section 3	Am I getting a good price? Is this the best price? Double paying for OS? Credit for un-expired Upgrade Advantage	Section D(12) - page 13 Section C - page 22 Section C - page 14 Section C - page 8	NONE (see Section C) BLACK BLACK NONE (but concept is GREEN - see your Business Desk contact)

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Term	Agreement Location	Issue	Guide Location (Section/Page)	Pre-Approved Alternatives
Reference prices. (continued)	Section 3	Ramped Payments Split first year payments Change True-up procedures Credit for purchases made during negotiations Change True-up formulas	Section D(13)(a) – page 14 Section D(13)(b) – page 16 Section C – page 16 Section D(13)(b) – page 16	GREEN GREEN RED RED RED
License confirmations for enterprise coverage.	Section 4	Divestiture	Section D(14) – page 17	YELLOW
Procedure for ordering select product licenses.	Section 5	Naked machines Sublicensing to affiliates outside the Enterprise Definition	Section D(15) – page 18 Section D(16) – page 19	BLACK NONE
Other rights during this agreement	Section 5 Section 6	Other than monthly ordering Copying manuals & other printed materials More training copies More evaluation copies	Section D(17) – page 20 Section D(18)(a) – page 21 Section D(18)(b) – page 22 Section D(18)(c) – page 23	NONE NONE (discuss with Business Desk) GREEN (up to 100) NONE

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Term	Agreement Location	Issue	Guide Location (Section/Page)	Pre-Approved Alternatives
Use Terms	Section 7	Fixed Use Terms	Section D(19) – page 24	RED
Making copies	Section 8	Liability for third party replication	Section D(20) – page 25	NONE
		Microsoft approved software installer		NONE
		Microsoft approved notice to users	Section D(21) – page 26	NONE
Restrictions	Section 9	Complying with export restrictions	Section D(22)(a) – page 27	NONE
		Restricted Rights Notice	Section D(22)(b) – page 28	NONE
Transfers of licenses	Section 10	MS consent to transfer licenses	Section D(23) – page 29	GREEN
		Remove tie between the Operating System and the machine	Section D(24) – page 30	NONE
Warranties and other obligations of Microsoft		Cancellation of unused Upgrade Advantage for licenses that were transferred	Section D(25) – page 31	NONE
Limited Product Warranty	Section 11(a)	More than 90-day warranty	Section D(26) – page 32	NONE

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<i>Term</i>	<i>Agreement Location</i>	<i>Issue</i>	<i>Guide Location (Section/Page)</i>	<i>Pre-Approved Alternatives</i>
Limited Product Warranty (continued)		Refund if warrant is breached	Section D(27) – page 33	NONE
Year 2000 warranty	Section 11(b)	Inclusion on the "effective date"	Section D(28) – page 34	NONE
		Non-compliance as reported by others	Section D(29) – page 35	NONE
		Collection of damages if not fixed		NONE
Defense of copyright infringement claim	Section 11(c)	Other types of intellectual property protection	Section D(30) – page 39	NONE
		Combining with a non-MS product	Section D(31) – page 40	NONE
NO OTHER WARRANTIES		Alternate remedy for an infringing product	Section D(32) – page 41	GREEN
Limitation of liability	Section 11(d)	Title and non-infringement	Section D(33) – page 42	NONE
Limitation	Section 12(a)	Eliminate/raise the cap	Section D(34) – page 43	BLACK
		Exclude cost of defense from cap		RED

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Term	Agreement Location	Issue	Guide Location (Section/Page)	Pre-Approved Alternatives
No liability for consequential damages	Section 12(b)	Eliminate provision Make mutual	Section D(35) – page 44	NONE YELLOW (depth customers only)
Verifying compliance	Section 13	Limit review to records only Put auditors under NDA Agree to escorted auditors Abide by security regulations	Section D(36) – page 47 Section D(37) – page 48	NONE NONE (see Business Desk for custom solutions) (same as above)
Term and Termination	Section 14	More than 3-days notice	Section D(38) – page 49	NONE
		Broader definition of material unlicensed use	Section D(39) – page 50	NONE
		Early termination	Section D(40) – page 51	RED
		Longer term		NONE
		Shorter Term		BLACK
		Spell out incurable breaches	Section D(41) – page 52	GREEN
		Longer cure period		NONE
		Microsoft default	Section D(42) – page 54	NONE

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Term	Agreement Location	Issue	Guide Location (Section/Page)	Pre-Approved Alternatives
Term and Termination (continued)		Longer extension option	Section D(43) – page 55	RED
Miscellaneous				
Entire Agreement	Section 15(a)	Addition of amendments as part of the Entire Agreement	Section D(44) – page 57	NONE
Notices	Section 15(b)	None		N/A
Assignment	Section 15(c)	Ability to assign	Section D(45) – page 58	NONE
		Withhold our consent		GREEN
Applicable Law	Section 15(d)	Mutual restrictions	Section D(46) – page 59	NONE
		Change to local state/venue	Section D(47) – page 60	GREEN
Survival	Section 15(e)	None	Section D – page 62	N/A
Confidentiality	Section 15(f)	None	Section D(48) – page 62	N/A
Large Account Resellers	Section 15(g)	None	Section D – page 62	N/A
Forms	Cover Page	None	Section E – page 2	N/A
	Address Information Form	None	Section E – page 3-4	N/A
	Affiliate Participation Form	None	Section E – page 5	N/A

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Term	Agreement Location	Issue	Guide Location (Section/Page)	Pre-Approved Alternatives
License Table	Enterprise Sign Up Form	None	Section E – page 6-7	N/A
Definition of the Enterprise	Enterprise Sign Up Form	Include less than the entire corporate family	Section D(3) – page 5	NONE
Designated Languages	Enterprise Sign Up Form	Desire to utilize more than 10% of software in Restricted Languages	Section E – page 8	NONE (but concept is GREEN – see your Business Desk contact)
Restricted Languages – Definition	Enterprise Sign Up Form	None	Section E – page 9	N/A
All Languages Category – Definition	Enterprise Sign Up Form	None	Section E – page 9	N/A
Designated Languages – Definition	Enterprise Sign Up Form	None	Section E – page 9	N/A
Language Allocation	Enterprise Sign Up Form	None	Section E – page 10	N/A
Enterprise license reference prices	Enterprise Sign Up Form	Am I getting a great price?	Section D(12) – page 13	NONE (see Section C for expanded discussion)
		Is this the best price?	Section E – page 10	BLACK
		Double paying for OS?	Section E – page 10	NONE (see Section C for expanded discussion)
		Credit for unexpired Upgrade Advantage	Section E – page 10	NONE (but concept is GREEN – see your Business Desk contact)

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Additional qualified desktop reference prices	Enterprise Sign Up Form	Change True-up formulas	Section D(13)(b) – page 16	RED
Use of a LAR	Reseller Information Form	Purchase direct from Microsoft Multiple LARs	Section E – page 11 Section D(7) – page 8 Section E – page 12-13	BLACK BLACK
Discounts	Select Sign Up Form	Discount on standard Select purchases	Section D(10) – page 11 Section E – page 14-15	NONE (see Section C for expanded discussion)
Issues NOT in Agreement	True Up Report	None	Section E – page 16	N/A
		Include services in a single invoice	Section C – page 11	NONE
		Grant credit for OEM purchases	Section C – page 14	RED
		Allow true-ups of servers and other products	Section C – page 17	RED

Section C

Business Issues

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Business Issues

Price Discount of 0% to 30% Off ERP

Customers naturally want to negotiate on price as well as other terms of the EA. Significant price discounting (greater than 10%, for example) is not generally warranted given the value of products included in the standard desktop configuration.

What is their Deployment Schedule?

If a customer will have a slow deployment from a competitive product or because of hardware/budgetary constraints, then we can consider using some part of the 10% discount. NOTE: One of the great selling features of the current EA is that the pricing model does take into account deployment, but we are not negotiating the deployment schedule product by product.

If we have this discussion, it should be framed so that we understand that their projected deployment is slow, therefore we applied an appropriate discount. We need to remind the customer that ease of use and no counting of licenses as deployed is a key benefit of the EA, and that regardless of the deployment schedule they forecast, we will grant rights to all software across the Enterprise on Day One of the agreement.

Hardware Refresh pays for OS upgrades?

If the customer is on an aggressive hardware refresh schedule (i.e. 24 months) or plan to replace a majority of their existing PC's within first 12 months or so of the EA, then it is reasonable to allow some discount to reflect this. We need to stress that EA pricing does not include the acquisition of an OS, we assume that each machine comes with an OS. Second, we do understand the realities of corporate life and our EA pricing reflects that "normal" hardware refresh will take place over the term of the EA.

Background:

In the breadth segment, the single price point was established to simplify pricing and allow the channel to quote pricing directly to customers rather than require them to go through Microsoft to price every deal. The price point was selected based on analysis of the commitment levels (i.e., installed base) of our customer base. Customers with a high commitment level may warrant a discount off this standard price.

In the depth segment, commitment level is still calculated to

Positioning:

The EA is a programmatic way to address the needs of enterprise customers in a standardized and consistent fashion. As such, the pricing explicitly takes into account your enterprise's number of PCs and Microsoft technology installed base (for depth customers). In addition, the pricing takes into account typical deployment timing and hardware refresh. We believe the price per desktop is fair and attractive given the tremendous amount of software the EA licenses you for.

If you believe your situation differs significantly from the more typical situation, please help us understand how your situation differs. [Follow up with questions on deployment success and rates, hardware refresh rates, use

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Price Discount of 0% to 30% Off ERP.

determine pricing. This feature was maintained to ensure we are recognizing the past investment our largest customers have already made in Microsoft technology.

Naturally customers want to know they are getting a "good deal" -- especially since the EA involves a commitment rather than just a forecast and generally requires a higher sign-off within the customer organization. Therefore, you should anticipate arguments for price discounting and establish a response plan in advance of presenting pricing to the customer. The following outlines some of the fundamental issues and corresponding approaches to use when negotiating pricing.

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of BackOffice CALS, etc. to identify the root issue.]

It is imperative that you pre-qualify the customer, before making the EA approach. Understand that most customers are SELECT customers and if they are not able to make the EA commitments - trying to push an EA solution is NOT delighting the customer - and will create a lot of extra work and cost in trying to perform exceptions to the EA. We must not be seen to "push" the EA at a customer.

The Enterprise Agreement provides substantial business benefits beyond the volume discount. [Refer to EA business case benefits].

In addition to the business benefits, the pricing of the EA is attractive compared to other software acquisition programs. [Refer to EA vs. Select financial comparison here.]

Ensure you understand the underlying issues driving their concerns regarding pricing. ("We understand your concerns and issues regarding the EA price. The EA pricing takes in to account your current Microsoft installed base, the number of desktops in your enterprise, typical deployment and hardware refresh patterns, and [insert other issues]").

The EA in the breadth space is intended to be a highly standardized offering with minimal involvement of Business Desk and other Microsoft resources. The number of EAs projected to be sold in the breadth segment is very large. If significant discounting were offered in this segment, at least two negative consequences would most likely result:

- (1) Every breadth customer would expect a substantial discount, reducing total revenue to Microsoft
- (2) Operational and other costs would be driven up because of the employment of more Microsoft resources on nearly every deal

Price discounts greater than 10% will not be considered in the breadth segment for reasons of fairness vs. the reasons described above -- no customer would care about the operational stuff and no good rep would

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Business Issues

Price Discount of 0% to 30% Off ERP

share that with a customer so in the end they are left with no 'why's'. This should be very clear. We do not give beyond 10% because we scale our pricing based on relative volume. We do not want a smaller customer getting a better price than a large customer. 10% gives us some room to play but we CANNOT go beyond this except for special MELP situations.

The EA is a means to help you create value for your enterprise in terms of flexibility, standardization, ensuring compliance, simplifying administration and budgeting, and reorienting your business relationship with Microsoft. [Refer to EA business case for fundamental benefits.]

The EA price is based on thoroughly profiling our customer base. We are not prepared to offer such a substantial discount.

How to Respond to Price-Related Objections

Underlying-issue

- Approach to address root issue
- (1) **Does not want all products so Select is cheaper way to get this desired subset of products**
 - Sell value of products and integrated platform; see appendix to EA business case presentation for key messages for selling platform
 - If this fails - Select is the best option
- (2) **Does not see value-added functionality and features of new products. Wants to wait and see what new upgrades are going to come out**
 - Sell value of products; see appendix to EA business case presentation for key messages for selling the value of upgrades
 - Sell benefit of flexible infrastructure and associated business flexibility (see EA business case)
 - Show value that customer has already received from previous purchases
- (3) **Cannot cost-effectively deploy products as fast as upgrades come out**
 - Aggressively involve services (MCS or partners) to increase customer's confidence in deployment success
- (4) **MELP customer who had a very good price**
 - Introduce customer to Select 4.0 changes from Select 3.0 so customer reacts to these changes and has accurate expectations before aggressively selling the EA
 - Use EA vs. Select comparison to show current alternatives and move customer from historical spend anchor
- (5) **Recently rolled out major upgrades so enterprise is totally current**
 - Show historical spend pattern and demonstrate how EA creates value by flattening out the "boom and bust" spending pattern
- (6) **Just trying to ensure getting best possible price**
 - Identify target and make a small price concession; then hold firm

Business Issues

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Guidelines:

Type	Authorization
Green	price discount between 0 and 10%
Yellow	price discount between 10 and 20%
Red	price discount between 20 and 30%
Black	price discount greater than 30%

Any discount directly affects revenue and profit from a given deal. In addition, if customers become aware of significant discounting for some customers, the marketplace will demand discounting in all situations. This discount should be employed sparingly when it significantly helps close a deal.

Factors to consider:

- Use of competitor products
- Deployment schedule and past success deploying upgrades
- Past success and satisfaction deploying upgrades
- Hardware refresh rates for operating system upgrades
- Current installed base
- Previous licensing customer (e.g., MELP, concurrency customers, etc.)
- Competitive situation (Office and BackOffice)
- Historical spend on Microsoft products (e.g., MELP customers may be facing a significant total spend increase under either an EA or standard Select 4.0)

Information needed to make determination:

- # of desktops
- # and version of Office licenses
- # and version of Operating System licenses
- # and type of CALs

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Multiple Language Blending

Use a weighted average price rather than the across-the-board 15% uplift if customer needs multiple languages beyond the 10% allowance already included in the program.

Background:

Frequently companies have the need for a relatively small number of localized language versions of the software. Currently, if we want an EA to reflect a greater than the 10% allowance of "restricted language" versions of the software they have to apply an across-the-board 15% uplift, which can significantly increase the overall price of the EA.

If the customer has a significant number of restricted languages that they want to include in the EA then the 15% uplift is reasonable.

If the customer has a slightly larger percentage of restricted language copies that they need then we have the ability to present a "blended price" which will reflect a more accurate representation of the actual number of restricted language versions being purchased. In order to calculate the blended price, we need to know the total number of PC's by country and the language requested.

Positioning:

Developing a vast range of software versions in multiple languages adds a significant cost to Microsoft. Our mechanism for recouping that cost is to increase the price for international versions in this way. An alternative would be for all customers to subsidize the international versions. We believe the mechanism we have chosen is most fair to the largest number of customers.

Guidelines:

Green

It is essential that we fully understand the type and quantity of language versions that the prospective Enterprise Agreement customer is using, and plans to use. Microsoft charges an uplift for many languages. If your customer needs Restricted Languages, then individual Uplifts may apply. When calculating the Uplift to charge, we either increase the price of the entire deal by 15%, or increase the price of the Desktops requiring uplifted languages by the specific percentage that applies to that language. The customer would receive the more favorable price. Having this discussion early in the fact-finding process, and revisiting it

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frequently to understand all localized language requirements is essential to our ability to accurately price, position, and close an EA. The greater the effort invested in this area, the less likely that you are to have a surprised, and dissatisfied, customer in the future.

Any concession would have to be determined on a case-by-case basis, so no alternative text is provided here. The solution requires specifying the appropriate language percentages in the pricing tool and in the agreement.

Section C

Business Issues

Reduce First EA Payment For Unexpired Portion of Maintenance Contract

Grant "credit" (through EA price reduction ONLY at ERP) for unexpired portion of Upgrade Advantage or Maintenance contract

Background:

If a maintenance or Upgrade Advantage customer is signing an EA before the expiration of their current Select Agreement, they will have paid for some period of maintenance or Upgrade Advantage under their previous Select contract that is now covered under the EA. The customer may ask that they be given "credit" for the redundant maintenance or Upgrade Advantage payment they make under their old Select agreement.

If there is substantial time remaining in the customer's old agreement, we may consider reducing the EA price to account for this issue. As the number of LARs involved in the old Select Agreement increases, solving this issue gets more complex and this exception should be discouraged.

Guidelines:

Green

Authorize a reduction in EA price to account for the redundant payment. Calculating the "credit" (i.e., the EA price reduction) requires the coordination of the account executive, the LAR fulfilling the old Select Agreement, and the Business Desk contact. The account executive needs to obtain the following information (from MS Sales and the LARs) to support the Business Desk's calculations:

- o Quantity, language, and type (e.g., Windows, Office, NT CAL) of licenses that are enrolled in Maintenance or Upgrade Advantage
- o The estimated retail price for Maintenance or Upgrade Advantage on a product-by-product basis
- o The number of full quarters remaining in the customer's Select Agreement

Positioning:

Some overlap of old Select Agreement Maintenance and Upgrade Advantage periods has been assumed in the calculation of price.

Section C

Business Issues

- The ERP of the unexpired portion of Maintenance/Upgrade Advantage must be taken off the ERP of the first payment of the EA. Microsoft will not issue a credit on a fully priced EA. The reduction of the first payment is the ONLY way to account for Maintenance. Do not demand information on or reduce the payment by the amount the customer paid! Always calculate the ERP of the items under consideration.

Include Early Termination Clause

Background:

Customers occasionally ask for an ability to terminate their agreement before they have finished making the payments they commit to up front. Because the Enterprise Agreement represents commitment from both parties, Microsoft is unwilling to be flexible in this regard. A customer who is not ready, willing and able to commit to fulfilling all of its payment obligations is not an appropriate candidate for an EA, however Select is available for this customer.

Positioning:

The Enterprise Agreement is based on a commitment model involving commitment from both sides. You are committing to license certain products for three years. The price offered is based on payment of the full license fee, even though the fee is paid in installments. Microsoft, in turn, is committing to make upgrades to the products available to you over this period and to protect your price for up to four years, and, upon expiration, to issue License Confirmations for new and upgrade Licenses for the latest version of each of the platform products. If the agreement is terminated early, Microsoft will not be obligated to issue the License Confirmations. Any termination of the agreement before satisfying your commitment would make your company ineligible for any further benefits.

Guidelines:

Red

Section C

Business Issues

Allow a 2-Year Term Rather Than a 3-Year Term

Allow EA term of two years instead of three years

Background:

Some customers may not want to commit for the 3-year duration of the agreement.

Positioning:

The Enterprise Agreement term is three years. One of the benefits customers tell us about is that the longer duration and certainty of pricing allows them to conduct long term planning and budgeting more effectively. Having a shorter term would mitigate this benefit.

The Enterprise Agreement is based on a commitment model involving commitment from both sides. The customer is committing to license certain products for three years. Microsoft, in turn, is committing to make upgrades to the products available to the customer over this period and to protect the price for up to four years, and, upon expiration, to issue License Confirmations for new and upgrade licenses for the latest version of each of the platform products.

A customer who is not ready, willing and able to commit to a full 3-year term is not an appropriate candidate for an Enterprise Agreement. Again, Select is available for this customer.

Guidelines:

Black This exception will not be approved under any circumstances.

Section C

Business Issues

Include Services in Single Invoice

Structure contract to include both software and services in single invoice

Background:

The selling of services should be tightly integrated with selling the EA. This integration may result in the customer thinking of the two offerings (EA and services) as a single purchase decision. The customer may conclude that he may sign a single contract encompassing both offerings.

Microsoft does not offer a single contract or invoice including both EA and services. Separate contracts are required. Having a single contract would complicate the relationship with the LAR (since payment for services goes directly to Microsoft instead of through the LAR). In addition, the majority of our customers prefer to pay for services and software separately since they treat them differently for financial reporting and management accounting purposes.

Guidelines:

Please see your Business Desk contact with a special case.

Positioning:

We have set up our contract to accommodate the vast majority of our customers. The majority of our customers prefer to pay for services and software separately since they treat them differently for financial reporting and management accounting purposes. Therefore we do not offer a single contract including both software and services.

Section C

Business Issues

Multiple LARs

Use multiple LARs for same enrollment

Background:

Customers may ask for multiple LARs for one of several reasons. The three most common are:

- They want a LAR for one-off products, often in a different country. This situation can be accommodated without an exception to the Enterprise Agreement – just have them sign different Select Enrollments under the Select 4.0 Master Agreement.
- They want a different LAR in a different country to meet specific business needs (e.g., to provide country-specific value-added services).
- They want to keep two LARs happy. We will not grant an exception for this reason. The customer must choose a single LAR.

Having multiple LARs processing EA payments complicates the process from an operational standpoint. This is contrary to the fundamental objective of simplifying licensing.

Guidelines:

Black This exception will not be approved under any circumstances.

Positioning:

[Ascertain why the customer is interested in having more than one LAR.] One of the primary benefits of the Enterprise Agreement is the simplification of administration associated with software licensing. Having multiple LARs handling your EA only complicates the administration of the agreement for all parties.

If a customer wants to use different LARs for different parts of its enterprise, then you can have them enter into multiple Enterprise Agreements, each covering a different "sub-enterprise," and each naming a different LAR.

Section C

Business Issues

Bypass LAR Altogether

Deal direct with Microsoft rather than through LAR

Background:

Some customers want to deal directly with Microsoft on such a substantial purchase agreement. In addition, if the LAR has not clearly demonstrated their value or performed poorly in the past, the customer may not see any value to having the LAR involved.

Positioning:

Microsoft has invested heavily in developing our LAR channel because it is presently the most efficient way to deliver software to our customers under Microsoft's business and staffing model.

In addition, LARs can play a highly valuable role depending on the customer's situation and needs. Some example roles they play are described below.

How to Respond to LAR Related Objections

Role of LAR

Description of Activity

(1) Identify EA candidates

- Gather information from customers to screen for high potential candidates

(2) Consult on contract and licensing

- Provide objective opinion and guidance on contract as well as give international advice (pricing, tax, tariff)
- Identify and help overcome obstacles in customer purchase process

(3) Cost analysis and delivery

- Provide customer with purchase history for baseline inventory
- Develop and deliver cost scenarios comparing EA to Select 4.0 along with other savings

(4) Implementation

- Assist in arranging financing and implementing new contract within the organization, including communication to the organization
- Develop and/or assist in deployment and continue providing support for additional products

Guidelines:

Black This exception will not be approved under any circumstances.

Section C

Business Issues

Grant Credit For OEM Purchases

Background:

Since customers refresh their hardware every three years or so and the operating system is included on the hardware they purchase from an OEM, they feel they are paying twice (once to the OEM and once for the EA) for the operating system software.

Guidelines:

Red

Change True-Up Formulas

Background:

For most customers (especially those growing rapidly), the true-up mechanism is a very attractive way for them to acquire licenses as they add desktops to their enterprise. The multiplier factors allow the customer to acquire these licenses at a substantial discount of any alternative acquisition option.

If customers think of the true-up factors as getting a pro-rated use of a license, however, they may object to the multipliers at end of years 2 and 3 as overly high. It is important to emphasize that what they are getting in the true-up is the indefinite license associated with the platform products as well as the indefinite license for any upgrades to the platform that come out during the remainder of the agreement. They are not just getting pro-rated use of the software.

Positioning:

Typical hardware refresh rates and deployment schedules are already taken into account in the EA pricing mechanism. [Use the financial comparison tool to demonstrate the impact of different deployment and refresh rates on the EA vs. Select comparison.]

Positioning:

True-up is a feature of Enterprise Agreements that allows customers to license new and incremental desktops above the initial commitment, thus allowing flexibility for the customer's enterprise to grow throughout the term of the agreement. At the end of each year, Microsoft sends the customer a letter requesting they provide a "True-up Report" that identifies any additional desktops that were added during the course of the year. If additional desktops were added, the customer would submit a purchase order for the additional licenses; if additional desktops were not added, the customer would submit a True-Up Report (Attachment A) stating that there was no increase. True-up is not a method of deployment - the initial pricing takes deployment schedules into consideration.

For most companies (especially those growing rapidly) true up is an extremely cost-effective way to add licenses as you add desktops. The following table shows (for a single but common scenario) a comparison of license acquisition costs under standard Select 4.0 (level A assumed) and under the EA true-up mechanism.

[If the customer is asking for an explanation.] True-up pricing for desktops or employees added during the agreement term provides license coverage ("get current, stay current" rights) for the year in which the desktops or employees are added through the duration of the three-year agreement term. True-up pricing is based on the annual desktop price and decreases throughout the term of the agreement in relation to the amount of time left in the agreement. The multiplier (2.5, 2.0, and 1.5) is less than 3.0 (what you would have expected had you added the PCs at the beginning of the agreement term) to take into account that you are getting less than 3 years of "stay current" rights. The chance of a new upgrade coming out during the remaining life of the agreement is less so you pay less for that benefit. Note that you still own a perpetual license for any PC added through true up, so the multiplier is not a factor for pro-rating the entire license price over the term of the agreement. [Consider showing the customer the price he would pay under standard Select to add these PCs in each of the three years. This comparison shows that the true-up pricing model is favorable to the standard Select model.]

Because the true-up already represents such a significant discount, Microsoft is not willing to change these formulas.

How to Explain the Value of the True-Up

Cost of adding a new PC (assume EA price of \$320 per desktop, Select price Level A)

	Year 1	Year 2	Year 3
EA True-up	\$800	\$640	\$480
Select 4.0:			
Office Pro	\$442	\$442	\$442
Office Pro VUP	262	N/A	N/A
BackOffice CAL	193	193	193
BackOffice CAL upgrade	67	67	N/A
Win NTW upgrade	114	114	114
TOTAL	\$1078	\$816	\$749
<i>Savings with EA True-up</i>	\$278	\$176	\$269

Guidelines:

Red

Section C

Business Issues

Change True Up Procedures

Background:

(See previous exception) Because the true up already represents such a significant discount, Microsoft is not willing to change these payment terms.

Positioning:

(See previous exception)

[If the customer wants to break the true-up into smaller payments or spread over multiple years.] Microsoft is interested in providing an uncomplicated, comprehensive licensing solution that simplifies the purchasing processes. Having a predictable software licensing cost associated with new desktops or employees added each year makes it simple for you to budget for the true-up orders. Breaking the true-up costs into quarterly or monthly payments or spreading over multiple years does not aid you in budgeting for the term of the agreement and adds considerable complexity to the billing and payment process.

Guidelines:

Red

Grant Credit for Purchases Made During EA Negotiation

Background:

Since the EA covers such a large number of products, a customer may think he should freeze individual spending on these Microsoft products while he is negotiating the EA (since once the EA is signed, he has essentially bought these products a second time.) The negative impact of offering this feature could be significant. Once such a feature was agreed upon with a specific customer, the customer would actually have the incentive to delay signing the EA (since he is essentially getting free product during the negotiation).

Guidelines:

Red

Positioning:

We believe the EA is a compelling licensing method for your enterprise. We aspire to communicate clearly and promptly with you so that you can come to a timely decision regarding the EA. As long as we mutually strive to make the decision in an efficient manner, the product you would acquire during this period would be minor. The additional time spent determining how to credit you just introduces a further delay in the process we ultimately are working on - determining the best licensing alternative to meet your needs.

Section C

Business Issues

Include Servers and Other Products in EA

Background:

The customer may wish to include server products or other products in their EA purchase.

Positioning:

Since there is not usually a one-for-one correlation between the number of server products or other products and the number of desktops in an enterprise, the EA does not include server products or products outside the Standard Desktop Configuration. We can, however, accommodate the initial purchase of these products in the pricing of the EA, but these products cannot be covered in the true-up process. As the customer adds more of these products over time, they will need to purchase them through their standard Select agreement. See your Business Desk contact for assistance with a solution. Remember that if additional products are added, the pricing of the Enterprise license needs to be adjusted to account for upgrade coverage for such products for any extension years.

Guidelines:

Green

Allow True Ups of Servers and Other Products

Background:

See above.

Guidelines:

Red

Positioning:

See above. We can accommodate the initial purchase of additional products in the pricing of the EA, but these products are not covered in the true up process.

Section C

Business Issues

Freeze Product Use Rights

Background:

A customer might ask us to give up the right to modify the Product Use Rights, on the theory that any such change effectively could change the value of its bargain, (e.g., if Microsoft eliminates free concurrent use rights, the licenses that the customer can acquire have a different value than they would have if concurrency was still a free benefit), or ask that we commit to obtaining the customer's consent before making any change.

Positioning:

We must retain the ability to modify the Product Use Rights, and it is not workable to burden that flexibility with an obligation to first get customer consent.

We are constantly adding new products (and new versions of existing products) to the Product List. Products (and versions of products) that may be added to the Select/Enterprise program in the future may require special licensing provisions that we cannot foresee today, and we need to have the flexibility to add appropriate license terms as we add new products and versions. If any customer can block changes in the Product Use Rights by withholding its consent, our ability to accommodate changes in the technology or the business model is gone. In "standard" Select, the customer's best practical protection is that it is not required to buy any licenses: if we add a new product or version to the Select Price List and the customer doesn't like the corresponding use rights, it can choose, simply, not to acquire licenses for that product or version.

Guidelines:

Red

Section C

Business Issues

Unaffiliated Aggregation

Background:

See the discussion of the Lead Customer definition in Section 2 of the Master Agreement. The most frequent contexts in which a customer will want to negotiate changes in this provision are:

Clarification: companies that want clarification of what we mean by ownership and control

Franchises: sales/service businesses that operate through franchisees (e.g., McDonald's restaurants or Ford auto dealerships)

Minority Interests: companies that have minority or plurality interests in other companies (that is, ownership is partial and control is either limited or non-existent)

Voluntary Associations: businesses tied together through voluntary or contractual affiliation rather than ownership (e.g., an accounting firm that handles the needs of its clients in foreign countries through "affiliate" firms that act as its "partners")

In the franchise context, we are willing to try to accommodate a customer that wants to include its true franchisees. Indicators of what we think of as "true franchisees" are:

- (1) a written agreement between franchisee and franchisor that gives the franchisee the right to operate under a name or trademark licensed by the franchisor and

Positioning:

We will not expand the definition of "Lead Customer Affiliate" to permit aggregation by affiliations or associations that share no real degree of ownership and control (e.g., consortiums, purchasing cooperatives, professional associations like the AMA or ABA). To do so would compromise our objectives of: (1) avoiding setting up an alternative distribution channel that competes unfavorably with LARs; (2) avoiding erosion of the price waterfall; (3) ensuring that the party with whom we have a contractual relationship can help us resolve problems with others they have "invited to the party"; and (4) keeping our agreements at least somewhat confidential.

Section C

Business Issues

Unaffiliated Aggregation

imposes on the franchisee certain restrictions on how it is to operate (e.g., a McDonalds franchise gets to operate under the "Golden Arches", and has to use meat, buns and napkins from specified approved sources or of specified quality); and

- (2) some sort of exclusivity of branding (e.g., you cannot buy a Burger King burger at a McDonalds restaurant).

Negotiations in this context vary greatly from agreement to agreement, so it is not possible to provide a useful pre-approved alternative. If this issue comes up in a deal you are working on, you can indicate to your customer that we may be able to work out a solution with them, but you will need to contact the Business Desk for assistance.

There may also be circumstances where the customer has legitimate and understandable reasons for wanting to include minority affiliates (e.g., it may have an Argentine "sub" in which it holds only a 49% interest because of an Argentine law requiring majority local ownership).

In such cases, we will try to work with the customer on a solution that meets their reasonable needs without unreasonably sacrificing our objectives. Such situations will require unique solutions. You should contact the Business Desk contact for help when this issue arises in this context.

Guidelines:

Section C

Business Issues

Black This exception will not be approved under any circumstances.

Naked PCs

Background:

Customers want to avoid paying "double" for operating systems licenses under their agreement.

Positioning:

Since we are only licensing them for upgrades to existing OEM licenses under an agreement, they are not paying double for the operating system. Trading in "naked" PCs often leads to unauthorized copying of software.

Guidelines:

Black This exception will not be approved under any circumstances.

Unlimited Liability

Background:

1. Eliminate or raise cap on liability? We have not eliminated the cap in the past. Most customers understand our need for a limit to our exposure, and see similar provisions enough to know such a cap is common. The issue of eliminating the cap is BLACK. No alternative is provided. It may be possible to agree to raise the cap as long as the potential liability still bears a reasonable relationship to the value of the agreement to Microsoft. Adjustments to the cap require LCA and Business Desk approval and are assessed on a case-by-case basis.

Exclude the duty to defend intellectual property claims (or other specific liabilities) from the cap? The customer may claim that it is not fair to burden them with any risk of infringement damages in excess of a cap on a product we (not they) design and license.

Guidelines:

Black This exception will not be approved under any circumstances.

Positioning:

Microsoft does not wish to "bet the whole company" on a single volume licensing agreement. We insist on a limit of our exposure, and one that is related to the value of the agreement to us. The most reliable and consistent measure of the value of a Master Agreement is the amount the customer has spent under the agreement. The same limitation, is found in Microsoft's retail licenses and in those of most of our competitors. Our first response is that the cap is the cap - it's not a cap on infringement liability, but all liability. As a practical matter, an end user's liability will always be less than the cap, because infringement damages are typically assessed as a reasonable percentage of royalties. See section 9(a) of the Master Agreement for a partial concession, but we will never agree to unlimited liability.

Section C

Business Issues

"Most-Favored" Nations Clause

Background:

A customer may ask for a "most favored customer" type clause where they want a guaranty that they'll receive the lowest pricing we ever give to any customer.

Positioning:

We will not agree to this concession. If a customer wants an explanation, we should state simply that we have a corporate policy against such provisions and that business terms agreed to with other customers are not relevant to this customer's deal, any more than the terms of this customer's deal are relevant to others.

Guidelines:

Black This exception will not be approved under any circumstances

Section D

Annotated EA - Terms & Conditions

Microsoft Confidential

MICROSOFT ENTERPRISE SELECT AGREEMENT

TERMS AND CONDITIONS

In this agreement the term "you" means the company which has entered into this agreement with Microsoft. The term "we" or "us" refers to the Microsoft company which signed this agreement. Your "affiliates" are legal entities that you own, that own you, or that are under common ownership with you. The same definition applies for our "affiliates". The term "ownership" means more than 50% ownership. As we use the term in this agreement, to "run" a product, means to copy, install, use, access, display, run or otherwise interact with it. When we refer to "license confirmations" we mean the evidence of license or Upgrade Advantage subscription provided by us, or one of our affiliates. The "desktop products" are: Microsoft Windows 98 or Windows NT Workstation; Microsoft Office Professional; and Microsoft BackOffice Client Access License ("BackOffice CAL"). Your "enterprise" includes you and all of the affiliates identified for inclusion at part III of the Enterprise Sign-Up Form. The "enterprise license" means the rights to run desktop products that you obtain under this agreement. Your "qualified desktops" are the personal desktop computers, portable computers, workstations and similar devices, which are used by and for the benefit of you or any affiliate included in your enterprise and which meets the minimum requirements for running any of the desktop products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer; (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant; a computer-aided design program used by an engineer or architect); or (iii) any computer or similar device that does not run and is not intended to run the Windows or Windows NT operating system.

1. "Your 'affiliates' are legal entities that you own, that own you, or that are under common ownership with you. The same definition applies for our 'affiliates'. The term 'ownership' means more than 50% ownership."

Handling Customer Objections

A customer may want to extend the benefits of its Enterprise agreement to persons and entities that it doesn't own and isn't owned by, or may want to include a broader set of "affiliates" in order to help it qualify for a better discount level. The standard definition was designed to accomplish several objectives:

- Volume discounts were intended to reward a customer's internal licensing volumes, and not to permit aggregation among unrelated, or only weakly related, entities. Allowing broader aggregation under an Enterprise agreement essentially sets up a distribution channel that has an unfair competitive advantage over the LARs, who are not permitted to aggregate volumes of unrelated customers in order to achieve better discounts.

Unless we want to completely erode our price waterfall, we must articulate some line between those who are permitted to aggregate and those who are not. The "ownership" standard articulates a reasonable and reasonably definitive line.

The "ownership" standard is there also because we want to know that the party we have the contractual relationship with has some ability to ensure that others participating under this agreement behave properly.

See Section C, page 19 for an explanation and discussion of this request.

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

ready for the full platform. We do not want to force our customers to standardize on products on which they are not yet sold, or for which they are not yet ready. **See the GREEN pre-approved alternative below.**

- **Component guaranty.** Your customer may wish to have contractual assurances that products they are counting on will not be removed from the Office and BackOffice suites, and, as a result, eliminated from the package to which they are committing. **One solution is to add the assurance to the definition of desktop products as shown in the GREEN pre-approved alternative below.**
- **Additional Products.** Your customer may wish to add other products to the Enterprise agreement. Additional desktop products can be added as can non-desktop products. The most common requests are for Microsoft Project, Microsoft developer tools software and certain server software. Additional products require a YELLOW level of approval. We are experimenting with standard language to add different types of additional products. This may be provided to you at a subsequent date. In the meantime, work with the Business Desk after having obtained approval for additional products to obtain the revised contract language.

Pre-Approved Alternatives

- **Less than full platform.**

Modify the Enterprise agreement to exclude one or two of the basic platform components, or if the full set of BackOffice components is the problem, exclude those unneeded components but include the rest. Some examples are:

- The "desktop products" are: *Microsoft Windows 98 or Windows NT Workstation, and Microsoft Office Professional.*
- The "desktop products" are: *Microsoft Windows 98 or Windows NT Workstation; Microsoft Office Professional; and Microsoft Windows NT Server and Exchange Server.*

These alternatives are GREEN.

- **Component guaranty.**

The "desktop products" are: *Microsoft Windows 98 or Windows NT Workstation upgrades; Microsoft Office Professional (the current version of which consists of the following components: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Microsoft Outlook and Microsoft Access); and Microsoft BackOffice Client Access License ("BackOffice CAL") (the current version of which consists of Client Access Licenses for the following components: Windows NT Server, SQL Server, Microsoft Exchange Server, Systems Management Server, and SNA Server).*

If, during the term of this agreement, we eliminate from Office Professional or BackOffice CAL any one of the separate components identified here (other than to replace it with a substitute product that is as good or better), but offer that component as a separately priced product, then that component will become part of the desktop products, at no additional charge. If, during the term of this agreement, we eliminate from Office Professional or BackOffice CAL any one of the separate components identified here (other than to replace it with a substitute product that is as good or better), and offer that component only as a component of some other product suite or suites, then the lowest priced product suite that includes that component will become part of the desktop products at no additional charge.

This alternative is GREEN. (Note, however, that the language reflects the full platform. It isn't difficult to modify to apply to a less-than-full-platform deal, but you should ask your Business Desk contact for assistance in doing so.)

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agreement."

Handling Customer Objections

A customer may wish to roll the cost of standard Select products (non-platform products) into the total enterprise license price.

See Section C, page 17.

Pre-Approved Alternative

None

3. "Your "enterprise" includes you and all of the affiliates identified for inclusion at part III of the Enterprise Sign-Up Form."

Handling Customer Objections

Your customer may not wish to include the entire corporate family.

The customer is free to include or exclude as many of its affiliates as it wishes, as long as each affiliate is either entirely in or entirely out and as long as the affiliates are listed on the Affiliate Participation Form. (Unlike Select, it is not possible to add to the Affiliate Participation list during the term of the Enterprise Agreement.)

Pre-Approved Alternative

See also the Enterprise Sign Up form, section III (Footnote #1).

4. "The 'enterprise license' means the rights to run desktop products that you obtain under this

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5. "Your "qualified desktops" are the personal desktop computers, portable computers, workstations and similar devices, which are used by and for the benefit of you or any affiliate included in your enterprise and which meets the minimum requirements for running any of the desktop products."

Handling Customer Objections

Your customer may question whether or not it needs to count computers that are on its premises, but used and owned by contractors it has hired.

The answer is yes; any and all personal desktop computers, portable computers, workstations and similar devices, which are used by and for the benefit of the customer or any affiliate included in the enterprise and which meet the minimum requirements for running any of the desktop products are qualified desktops.

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

MICROSOFT ENTERPRISE SELECT AGREEMENT

TERMS AND CONDITIONS

In this agreement the term "you" means the company which has entered into this agreement with Microsoft. The term "we" or "us" refers to the Microsoft company which signed this agreement. Your "affiliates" are legal entities that you own, that own you, or that are under common ownership with you. The same definition applies for our "affiliates". The term "ownership" means more than 50% ownership. As we use the term in this agreement, to "run" a product, means to copy, install, use, access, display, run or otherwise interact with it. When we refer to "license confirmations" we mean the evidence of license or Upgrade Advantage subscription provided by us, or one of our affiliates. The "desktop products" are: Microsoft Windows 98 or Windows NT Workstation; Microsoft Office Professional; and Microsoft BackOffice Client Access License ("BackOffice CAL"). Your "enterprise" includes you and all of the affiliates identified for inclusion at part III of the Enterprise Sign-Up Form. The "enterprise license" means the rights to run desktop products that you obtain under this agreement. Your "qualified desktops" are the personal desktop computers, portable computers, workstations and similar devices, which are used by and for the benefit of you or any affiliate included in your enterprise and which meets the minimum requirements for running any of the desktop products. **Qualified desktops do not include:** (i) any computer that is designated as a server and not used as a personal computer; (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant; a computer-aided design program used by an engineer or architect); or (iii) any computer or similar device that does not run and is not intended to run the Windows or Windows NT operating system.⁶

products on a larger number of devices. However, it also increases the number of qualified desktops, and the revenue we receive. As a result, eliminating one of the three classes of exceptions at a customer's request is easy to do. Broadening the list of exceptions is something we should not do. At a very basic level, an EA is for a customer that is committed to one or more Microsoft products across the desktops within its enterprise. Servers, hardware that will run only line of business applications and hardware that will not use Windows operating systems are already excluded. It is hard to imagine what other hardware a customer might want to exclude that would not undercut the notion of commitment. If this issue comes up, you should ask your Business Desk contact for assistance.

6. "Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer; (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant; a computer-aided design program used by an engineer or architect); or (iii) any computer or similar device that does not run and is not intended to run the Windows or Windows NT operating system."

Handling Customer Objections

A customer might want to either enlarge or diminish the definition of the hardware within the enterprise that gets excluded from the definition of qualified desktops.

Narrowing the list of exceptions (for example, by eliminating the special treatment for devices that do not and are not intended to run Windows or Windows NT operating systems) allows the customer to use the licensed operating systems, and the revenue we receive. As a result, broadening the list of exceptions is something we should do. Broaderening the list of exceptions is something we should not do. At a very basic level, an EA is for a customer that is committed to one or more Microsoft products across the desktops within its enterprise. Servers, hardware that will run only line of business applications and hardware that will not use Windows operating systems are already excluded. It is hard to imagine what other hardware a customer might want to exclude that would not undercut the notion of commitment. If this issue comes up, you should ask your Business Desk contact for assistance.

Pre-Approved Alternative

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HIGHLY CONFIDENTIAL

Section D

Annotated EA - Terms & Conditions

1. Enterprise license acquisition. You have identified your enterprise at part III of the Enterprise Sign-Up Form. Once you have submitted your enterprise license purchase order to the reseller named on the Reseller Information Form, you may, during the term of this agreement, run one copy of the latest version (or any prior version) of each desktop product, in any designated language, on each qualified desktop.⁷ If you have chosen the "listed languages" category at part IV of the Enterprise Sign-Up Form, you may run up to 10% of the copies of any desktop product in any combination of "restricted languages". If you have chosen the "all languages" category at part IV of the Enterprise Sign-Up Form, you may run any mix of languages. You are responsible for ensuring that your affiliates comply with the terms and conditions of this agreement.

You agree to assist us in determining the total number of qualified desktops within your enterprise that are located outside the country in which this agreement is entered into, identified by country. This information must be supplied to us upon submission of this agreement. This information will be for our internal use only, and will not alter the reference prices for the desktop products or additional desktop licenses under this agreement.

In addition, during the term of this agreement, you have the right to acquire licenses and Upgrade Advantage subscriptions for other products for use within your enterprise at the Select price level that corresponds to the size of your enterprise, as provided at part I of the Select Sign Up Form. The procedure for ordering such licenses is discussed in section 5 below.

- *Some customers may want to use multiple LARs instead of just one.*

See Section C, page 12. See also the opening paragraph of the Reseller Information Form, (Footnote #1).

Pre-Approved Alternative

None

7. "Once you have submitted your enterprise license purchase order to the reseller named on the Reseller Information Form, you may, during the term of this agreement, run one copy of the latest version (or any prior version) of each desktop product, in any designated language, on each qualified desktop."

Handling Customer Objections

- *Some customers may want to buy directly from Microsoft on such a substantial purchase agreement instead of going through a LAR or may see no value in having the LAR involved.*

See Section C, page 13.

Section D

Annotated EA - Terms & Conditions

1. Enterprise license acquisition. You have identified your enterprise at part III of the Enterprise Sign-Up Form. Once you have submitted your enterprise license purchase order to the reseller named on the Reseller Information Form, you may, during the term of this agreement, run one copy of the latest version (or any prior version) of each desktop product, in any designated language, on each qualified desktop. If you have chosen the "listed languages" category at part IV of the Enterprise Sign-Up Form, you may run up to 10% of the copies of any desktop product in any combination of "restricted languages". If you have chosen the "all languages" category at part IV of the Enterprise Sign-Up Form, you may run any mix of languages. You are responsible for ensuring that your affiliates comply with the terms and conditions of this agreement.

You agree to assist us in determining the total number of qualified desktops within your enterprise that are located outside the country in which this agreement is entered into, identified by country. This information must be supplied to us upon submission of this agreement. This information will be for our internal use only, and will not alter the reference prices for the desktop products or additional desktop licenses under this agreement.

In addition, during the term of this agreement, you have the right to acquire licenses and Upgrade Advantage subscriptions for other products for use within your enterprise at the Select price level that corresponds to the size of your enterprise, as provided at part I of the Select Sign Up Form. The procedure for ordering such licenses is discussed in section 5 below.

8. *"If you have chosen the "listed languages" category at part IV of the Enterprise Sign Up Form, you may run up to 10% of the copies of any desktop product in any combination of "restricted languages. If you have chosen the "all languages" category at part IV of the Enterprise Sign-Up Form, you may run any mix of languages."*

Handling Customer Objections

See Section C, page 6. See also the Enterprise Sign Up Form, section IV (Footnote #2).

Pre-Approved Alternative

See Section C, page 6. See also the Enterprise Sign Up Form, section IV (Footnote #2).

1. Enterprise license acquisition. You have identified your enterprise at part III of the Enterprise Sign-Up Form. Once you have submitted your enterprise license purchase order to the reseller named on the Reseller Information Form, you may, during the term of this agreement, run one copy of the latest version (or any prior version) of each desktop product, in any designated language, on each qualified desktop. If you have chosen the "listed languages" category at part IV of the Enterprise Sign-Up Form, you may run up to 10% of the copies of any desktop product in any combination of "restricted languages". If you have chosen the "all languages" category at part IV of the Enterprise Sign-Up Form, you may run any mix of languages. You are responsible for ensuring that your affiliates comply with the terms and conditions of this agreement.

You agree to assist us in determining the total number of qualified desktops within your enterprise that are located outside the country in which this agreement is entered into, identified by country. This information must be supplied to us upon submission of this agreement. This information will be for our internal use only, and will not alter the reference prices for the desktop products or additional desktop licenses under this agreement.

In addition, during the term of this agreement, you have the right to acquire licenses and Upgrade Advantage subscriptions for other products for use within your enterprise at the Select price level that corresponds to the size of your enterprise, as provided at part I of the Select Sign Up Form. The procedure for ordering such licenses is discussed in section 5 below.

to require that the customer bear responsibility for the affiliates to which it sublicenses. The customer is free to choose which of its affiliates it will (and which it will not) sublicense to. If it is concerned about an affiliate's trustworthiness or reliability, it should not sublicense to that affiliate, and should require instead that the affiliate use other means (perhaps a separate agreement) to obtain its licenses. *If necessary, you may use the GREEN pre-approved alternative below (revised first paragraph; second and third paragraphs remain unchanged).*

Pre-Approved Alternative

Enterprise license acquisition. You have identified your enterprise at part III of the Enterprise Sign-Up Form. Once you have submitted your enterprise license purchase order to the reseller named on the Reseller Information Form, you may, during the term of this agreement, run one copy of the latest version (or any prior version) of each desktop product, in any designated language, on each qualified desktop. If you have chosen the "listed languages" category at part IV of the Enterprise Sign-Up Form, you may run up to 10% of the copies of any desktop product in any combination of "restricted languages". If you have chosen the "all languages" category at part IV of the Enterprise Sign-Up Form, you may run any mix of languages. You are responsible for making best efforts to ensure that your affiliates comply with the terms and conditions of this agreement.

This alternative is GREEN.

9. "You are responsible for ensuring that your affiliates comply with the terms and conditions of this agreement."

Handling Customer Objections

Your customer may not want to be responsible for ensuring that its affiliates comply with the terms of the agreement or may request that it only be required to make best efforts to ensure compliance.

It is important for some entity to be responsible for compliance with the terms of the agreement as it relates to each copy used or accessed. If the customer sublicenses to an affiliate, we have no direct contractual relationship with the affiliate, and no specific confirmation that the affiliate intends to be bound by the terms of the agreement and/or the use terms. We could argue that they are implicitly bound, but those arguments are technical and complex and we prefer not to have to make them. As between Microsoft and the customer, it is fair and reasonable

the customer is free to choose which of its affiliates it will (and which it will not) sublicense to that affiliate, and should require instead that

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Annotated EA - Terms & Conditions

1. Enterprise license acquisition. You have identified your enterprise at part III of the Enterprise Sign-Up Form. Once you have submitted your enterprise license purchase order to the reseller named on the Reseller Information Form, you may, during the term of this agreement, run one copy of the latest version (or any prior version) of each desktop product, in any designated language, on each qualified desktop. If you have chosen the "listed languages" category at part IV of the Enterprise Sign-Up Form, you may run up to 10% of the copies of any desktop product in any combination of "restricted languages". If you have chosen the "all languages" category at part IV of the Enterprise Sign-Up Form, you may run any mix of languages. You are responsible for ensuring that your affiliates comply with the terms and conditions of this agreement.

You agree to assist us in determining the total number of qualified desktops within your enterprise that are located outside the country in which this agreement is entered into, identified by country. This information must be supplied to us upon submission of this agreement. This information will be for our internal use only, and will not alter the reference prices for the desktop products or additional desktop licenses under this agreement.

In addition, during the term of this agreement, you have the right to acquire licenses and Upgrade Advantage subscriptions for other products for use within your enterprise at the Select price level that corresponds to the size of your enterprise, as provided at part I of the Select Sign Up Form.¹⁰ The procedure for ordering such licenses is discussed in section 5 below.

10. "In addition, during the term of this agreement, you have the right to acquire licenses and Upgrade Advantage subscriptions for other products for use within your enterprise at the size of Select price level that corresponds to the size of your enterprise, as provided at part I of the Select Sign Up Form."

Handling Customer Objections

Your customer may request a greater discount on standard Select products than its qualified desktop count entitles it to (e.g., it may have a division that uses Macs for which it wishes to license Select products. These non-qualified desktops wouldn't ordinarily impact its volume discount).

Pre-Approved Alternative

See Section C, pages 2-5. See also the Select Sign Up Form, section I (Footnote #1).

Section D

Annotated EA - Terms & Conditions

2. Updating enterprise license coverage. At each anniversary of the effective date and at the expiration or early termination of this agreement, you must determine the current number of qualified desktops in your enterprise. If the number has increased, you must submit a purchase order to your reseller to license those additional qualified desktops within 15 days following the anniversary, expiration or termination.¹¹ In each such order, you must identify the language and country of usage of all additional qualified desktops. If the number has not increased, you must submit a True-Up Report within that 15 day period.

11. "If the number has increased, you must submit a purchase order to your reseller to license those additional qualified desktops within 15 days following the anniversary, expiration or termination."

Handling Customer Objections

A customer may want to agree on terms ahead of time to deal with a situation where they either acquire a new company or downsize or divest part of their existing one.

- *True Down.* The customer may want us to incorporate a provision for reducing payments if the number of desktops in the enterprise decreases during the term of the agreement. Companies facing the potential of significant downsizing, restructuring, or stagnant growth may want to shift some of that risk to Microsoft through a "true down" mechanism whereby Microsoft credits them if their total number of PCs decreases from the initial number. However, this is a commitment-based agreement where Microsoft is sharing risk with the customer - financing the software acquisition over time, financing upgrades over time, and offering price protection on the core products purchased over the term of an agreement. Given all this, Microsoft is not in a position to bear the individual business risk of all its customers.
- *Divestiture.* Customers are frequently concerned that they will not receive the full value of their bargain if the "enterprise" shrinks. Likewise, if their enterprise grows considerably (most likely the result of an acquisition), they want Microsoft to agree to renegotiate the terms of their agreement. Our policy is that we would be reasonable in working with a customer for major changes of this sort. However, all such situations must be dealt with on a case-by-case basis.

Pre-Approved Alternative

For further discussion of this issue and a YELLOW pre-approved alternative, refer to the Terms & Conditions, section 4 (Footnote #14).

3. Reference prices. The enterprise license reference price identified at part VI of the Enterprise Sign-Up Form is based on the number of qualified desktops, the existing license information, and the language option identified on the Enterprise Sign-Up Form.¹² You agree to submit a purchase order to your designated reseller for the enterprise license upon submission of this agreement and for licenses for additional qualified desktops on each anniversary of its effective date, as required in section 2 above. We will invoice your reseller for the enterprise license in annual installments. The first installment will be invoiced upon submission of the order; the others on each anniversary of the effective date.¹³ The reference prices for licensing additional qualified desktops are identified at part VII of the Enterprise Sign-Up Form.¹⁴ We will invoice your reseller upon submission of your order. Actual price and payment terms are determined by agreement with your reseller. Reference prices do not include any applicable taxes, duties, or tariffs.

12. "The enterprise license reference price identified at part VI of the Enterprise Sign-Up Form is based on the number of qualified desktops, the existing license information, and the language option identified on the Enterprise Sign-Up Form."

Handling Customer Objections

Regarding pricing, a customer may want to know:

- Are they getting a great price? See Section C, pages 2-5.
- Are they getting a price that matches the best price that Microsoft gives to similar customers ("most favored nation" clause)? See Section C, page 22.
- Because of their frequent refresh rate and the fact that they're buying PCs with OEM versions of the operating system already pre-loaded, aren't they paying for their operating systems twice? See Section C, page 14.
- Can they get a credit if their current Select agreement hasn't yet expired and they'll have overlapping Upgrade Advantage coverage? See Section C, page 8.

Pre-Approved Alternative

See also the Enterprise Sign Up Form, section VI (Footnote #3). For related discussion of the operating system issue, refer to the Terms & Conditions, section 4 (Footnote #15) and section 10 (Footnote #24).

Section D

Annotated EA - Terms & Conditions

3. Reference prices. The enterprise license reference price identified at part VI of the Enterprise Sign-Up Form is based on the number of qualified desktops, the existing license information, and the language option identified on the Enterprise Sign-Up Form.¹² You agree to submit a purchase order to your designated reseller for the enterprise license upon submission of this agreement and for licenses for additional qualified desktops on each anniversary of its effective date, as required in section 2 above. We will invoice your reseller for the enterprise license in annual installments. **The first installment will be invoiced upon submission of the order; the others on each anniversary of the effective date.**^{13a} The reference prices for licensing additional qualified desktops are identified at part VII of the Enterprise Sign-Up Form.^{13b} We will invoice your reseller upon submission of your order. Actual price and payment terms are determined by agreement with your reseller. Reference prices do not include any applicable taxes, duties, or tariffs.

13a. "The first installment will be invoiced upon submission of the order; the others on each anniversary of the effective date."

Handling Customer Objections

The customer may want special payment terms, such as:

- *Ramped Payments.*

Microsoft will bill the customer's LAR in annual installments. The first installment may exceed what the customer has budgeted, and therefore might pose a difficulty. The customer may ask for a series of unequal payments (perhaps lower in the first year, and increasing in the second and third, keeping the total deal price constant) or payments invoiced at more frequent intervals so that it can spread its expenditures more smoothly throughout the year. You should point out that, by spreading the total deal payments over the three year term of the agreement, Microsoft is already providing a form of financing (this is part of our risk sharing role with the enterprise customer). Of course, even if Microsoft invoices the LAR in equal annual installments, the LAR could, as part of its bargain with the customer, agree to defer and finance all or part of each annual installment to achieve the customer's desired terms. You should first encourage your customer to work with its LAR to try to arrive at this type of solution. If this issue is a deal breaker, have the customer explain its budgetary constraints so that we can craft an acceptable solution. **The GREEN pre-approved alternative below could be used for this purpose (if approved).**

- *Split first year payments*

Again, for customers who have not anticipated signing an EA in their budgeting, making the initial lump sum payment in the current fiscal year may be difficult. By splitting the first year payment, the customer may be able to shift part of this payment into its next fiscal year, which can then be figured into that year's budget. As noted above, by spreading the total deal payments over the three year term of the EA, Microsoft is already providing a form of financing (this is part of our risk sharing role with the enterprise customer). You should first encourage your customer to work with its LAR to see if the LAR can provide the financing solution, since again, any deferred payment has a negative financial impact on Microsoft because of the time value of money, plus there are added operational costs associated with handling a split payment. However, if working with the LAR is unsuccessful, we may be willing to accommodate this request. **A GREEN pre-approved alternative is provided below.**

Section D

Annotated EA - Terms & Conditions

- Quarterly true up payments
See Section C, page 16.
- Credit for purchases made during the EA negotiations
See Section C, page 16.

Pre-Approved Alternative

- Ramped Payments

Reference prices. The enterprise license reference price identified at part VI of the Enterprise Sign-Up Form is based on the number of qualified desktops, the existing license information, and the language option identified on the Enterprise Sign-Up Form. You agree to submit a purchase order to your designated reseller for the enterprise license upon submission of this agreement and for licenses for additional qualified desktops on each anniversary of its effective date, as required in section 2 above. We will invoice your reseller for the enterprise license in annual installments. *The installments will be _____% and _____% of the total, respectively. The first installment will be invoiced upon submission of the order, the others on each anniversary of the effective date. The reference prices for licensing additional qualified desktops are identified at part VII of the Enterprise Sign-Up Form. We will invoice your reseller upon submission of your order. Actual price and payment terms are determined by agreement with your reseller. Reference prices do not include any applicable taxes, duties, or tariffs.*

This alternative is GREEN.

- Split first year payment

Reference prices. The enterprise license reference price identified at part VI of the Enterprise Sign-Up Form is based on the number of qualified desktops, the existing license information, and the language option identified on the Enterprise Sign-Up Form. You agree to submit a purchase order to your designated reseller for the enterprise license upon submission of this agreement and for licenses for additional qualified desktops on each anniversary of its effective date, as required in section 2 above. We will invoice your reseller for the enterprise license in four installments, *two in the first year and annually after that. The first installment will be invoiced upon submission of the order, the second six months later, and the others on each anniversary of the effective date. The installments will be for 17%, 17%, 33% and 33% of the reference price. The reference prices for licensing additional qualified desktops are identified at part VII of the Enterprise Sign-Up Form. We will invoice your reseller upon submission of your order. Actual price and payment terms are determined by agreement with your reseller. Reference prices do not include any applicable taxes, duties, or tariffs.*

This alternative is GREEN.

- Quarterly true-up payments
See Section C, page 16.
- Credit for purchases made during the EA negotiations
See Section C, page 16.

Section D

Annotated EA - Terms & Conditions

3. **Reference prices.** The enterprise license reference price identified at part VI of the Enterprise Sign-Up Form is based on the number of qualified desktops, the existing license information, and the language option identified on the Enterprise Sign-Up Form.¹² You agree to submit a purchase order to your designated reseller for the enterprise license upon submission of this agreement and for licenses for additional qualified desktops on each anniversary of its effective date, as required in section 2 above. We will invoice your reseller for the enterprise license in annual installments. The first installment will be invoiced upon submission of the order; the others on each anniversary of the effective date.^{13a} The reference prices for licensing additional qualified desktops are identified at part VII of the Enterprise Sign-Up Form.^{13b} We will invoice your reseller upon submission of your order. Actual price and payment terms are determined by agreement with your reseller. Reference prices do not include any applicable taxes, duties, or tariffs.

13b. *"The reference prices for licensing additional qualified desktops are identified at part VII of the Enterprise Sign-Up Form."*

Handling Customer Objections

Regarding true-up pricing, a customer may want to know if Microsoft will change the true-up formulas.

See Section C, page 15.

See also the Enterprise Sign Up Form, Section VII (Footnote #4). Many of the same objections discussed in Footnote #12 of the Terms & Conditions and Footnote #3 of the Enterprise Sign Up Form with regard to the enterprise license reference price may also come up here. Refer to the discussion there.

Section D

Annotated EA - Terms & Conditions

4. License confirmations for enterprise coverage. We will issue a license confirmation for licenses for desktop products upon expiration (but not early termination) of this agreement.¹⁴ The license confirmation will be for licenses for the latest version of each desktop product in a number equal to the total number of qualified desktops identified on the Enterprise Sign-Up Form, as updated by your annual orders for licenses for additional qualified desktops. All operating system licenses will be upgrade licenses, which means that you will need to have an underlying license that qualified for the upgrade. Because all operating system licenses granted will be upgrade licenses, you agree that all new or replacement qualified desktops acquired during the term of this agreement on which you will run the Windows operating system will be licensed either for Windows 9.x or Windows NT Workstation from the equipment's Original Equipment Manufacturer.¹⁵ Your licenses for all desktop products other than operating system products will be upgrade licenses to the extent of the existing licenses you have identified on the License Table at part II of the Enterprise Sign-Up Form. All other licenses for the desktop products will be "full" licenses, rather than upgrade licenses. All Office family upgrade licenses will be for Office Professional. All operating system upgrade licenses will be for Windows NT Workstation or its successor. The maximum number of upgrade BackOffice CALs we will issue is the number of qualified desktops indicated on the Enterprise Sign-Up Form. All licenses granted pursuant to this section will be allocated among the languages in the percentages specified in part V of the Enterprise Sign-Up Form.

14. "We will issue a license confirmation for licenses for desktop products upon expiration (but not early termination) of this agreement."

Handling Customer Objections

Customers are frequently concerned that they will not receive the full value of their bargain if their enterprise shrinks.

For discussion, refer to the Terms & Conditions, section 2 (Footnote #11). See YELLOW pre-approved alternative below.

Pre-Approved Alternative

Divestitures. If you divest a substantial portion (greater than 10%) of your enterprise, we will work in good faith with you to determine how your revised requirements can be accommodated in the context of this agreement.

This alternative is YELLOW.

Section D

Annotated EA - Terms & Conditions

4. License confirmations for enterprise coverage. We will issue a license confirmation for licenses for desktop products upon expiration (but not early termination) of this agreement.¹⁴ The license confirmation will be for licenses for the latest version of each desktop product in a number equal to the total number of qualified desktops identified on the Enterprise Sign-Up Form, as updated by your annual orders for licenses for additional qualified desktops. All operating system licenses will be upgrade licenses, which means that you will need to have an underlying license that qualified for the upgrade. Because all operating system licenses granted will be upgrade licenses, you agree that all new or replacement qualified desktops acquired during the term of this agreement on which you will run the Windows operating system will be licensed either for Windows 9.x or Windows NT Workstation from the equipment's Original Equipment Manufacturer.¹⁵ Your licenses for all desktop products other than operating system products will be upgrade licenses to the extent of the existing licenses you have identified on the License Table at part II of the Enterprise Sign-Up Form. All other licenses for the desktop products will be "full" licenses, rather than upgrade licenses. All Office family upgrade licenses will be for Office Professional. All operating system upgrade licenses will be for Windows NT Workstation or its successor. The maximum number of upgrade BackOffice CALs we will issue is the number of qualified desktops indicated on the Enterprise Sign-Up Form. All licenses granted pursuant to this section will be allocated among the languages in the percentages specified in part V of the Enterprise sign-up Form.

Pre-Approved Alternative

None

15. "Because all operating system licenses granted will be upgrade licenses, you agree that all new or replacement qualified desktops acquired during the term of this agreement on which you will run the Windows operating system will be licensed either for Windows 9.x or Windows NT Workstation from the equipment's Original Equipment Manufacturer."

Handling Customer Objections

A customer may have bought, or intend to buy, "naked" machines.

See Section C, page 21.

See also the Enterprise Sign Up Form, section VI (Footnote #3) and the Terms & Conditions, section 3 (Footnote #12) and section 10 (Footnote #24).

Section D

Annotated EA - Terms & Conditions

5. Procedure for ordering select product licenses.

Products. During the term of this agreement, you may also order licenses for products other than desktop products which are included in the Product List in effect at the time of your order. You may order standard or upgrade licenses. You may also order Upgrade Advantage subscriptions for certain products. You may order an upgrade license or Upgrade Advantage subscription only if you already have a qualifying license. The Product List provides information on products available for licensing under Select, point values, product pools, product upgrade or license qualification criteria, Upgrade Advantage subscriptions and additional product information. New versions of the Product List will be made available to you.

Who can benefit. You can sublicense to affiliates identified on the Affiliate Participation Form in order to share the benefits of this agreement.¹⁶ You may not acquire licenses or Upgrade Advantage subscriptions under this agreement for the use or benefit of any other person or entity. When licenses are sublicensed, you retain the licenses in your name but the affiliate to which you sublicense may run the software. You may want to have licenses owned in the name of an affiliate. If so, you must transfer the relevant license confirmations or provide a photocopy of them to the affiliate (or, if you are transferring a portion of the licenses listed on a license confirmation, you must transfer a photocopy of the relevant license confirmation, along with a statement identifying the licenses being transferred). Other transfer restrictions set out in section 10 also apply.

Orders. A license for any product other than a desktop product must be ordered in the month in which the copy of a product is first run from a particular computer or similar device.¹⁷ Your order must specify version number, language and country of usage for each license. We will issue license confirmations covering all such licenses and Upgrade Advantage subscriptions ordered. The license confirmations are your evidence of license.

License confirmations. Once you have received a license confirmation, the listed licenses become perpetual, as long as you use the products only as permitted by this agreement and the use terms. An Upgrade Advantage subscription listed in a license confirmation is not perpetual, but rather entitles you to a perpetual right to run one copy of the identified product in the latest version that becomes available at retail during the term of this agreement.

16. "You can sublicense to affiliates identified on the Affiliate Participation Form in order to share the benefits of this agreement."

Handling Customer Objections

A customer may wish to sublicense to other affiliates not listed on the Affiliate Participation Form.

The enterprise program does not allow for a non-enterprise affiliate to purchase under this agreement both because we cannot accommodate purchases of platform products under variable pricing, and because to do so would introduce a degree of complexity into the agreement that we feel is easily enough handled by requiring the non-participating affiliates to sign a separate, Select-only Master Agreement. If this is a concern for your customer, you should direct them to sign an EA for their affiliates that can commit to enterprise terms, and sign an additional master agreement to accommodate their affiliates who wish to purchase under standard Select. For other concerns see your Business Desk representative.

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

5. Procedure for ordering select product licenses.

Products. During the term of this agreement, you may also order licenses for products other than desktop products which are included in the Product List in effect at the time of your order. You may order standard or upgrade licenses. You may also order Upgrade Advantage subscriptions for certain products. You may order an upgrade license or Upgrade Advantage subscription only if you already have a qualifying license. The Product List provides information on products available for licensing under Select, point values, product pools, product upgrade or license qualification criteria, Upgrade Advantage subscriptions and additional product information. New versions of the Product List will be made available to you.

Who can benefit. You can sublicense to affiliates identified on the Affiliate Participation Form in order to share the benefits of this agreement.¹⁶ You may not acquire licenses or Upgrade Advantage subscriptions under this agreement for the use or benefit of any other person or entity. When licenses are sublicensed, you retain the licenses in your name but the affiliate to which you sublicense may run the software. You may want to have licenses owned in the name of an affiliate. If so, you must transfer the relevant license confirmations or provide a photocopy of them to the affiliate (or, if you are transferring a portion of the licenses listed on a license confirmation, you must transfer a photocopy of the relevant license confirmation, along with a statement identifying the licenses being transferred). Other transfer restrictions set out in section 10 also apply. **Orders.** A license for any product other than a desktop product must be ordered in the month in which the copy of a product is first run from a particular computer or similar device.¹⁷ Your order must specify version number, language and country of usage for each license. We will issue license confirmations covering all such licenses and Upgrade Advantage subscriptions ordered. The license confirmations are your evidence of license.

License confirmations. Once you have received a license confirmation, the listed licenses become perpetual, as long as you use the products only as permitted by this agreement and the use terms. An Upgrade Advantage subscription listed in a license confirmation is not perpetual, but rather entitles you to a perpetual right to run one copy of the identified product in the latest version that becomes available at retail during the term of this agreement.

17. "A license for any product other than a desktop product must be ordered in the month in which the copy of a product is first run from a particular computer or similar device."

Handling Customer Objections

A customer may claim logistical problems in getting all its licenses ordered in the month when the copies were made and ask that Microsoft extend the ordering window.

The request is understandable in some cases, but there are revenue flow and operational reasons why we should not accommodate requests of this nature. In the EA context, this should not be a huge issue to customers, since all of the platform products are covered by a different reporting mechanism (i.e., the enterprise license and true-up).

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

6. Other rights during this agreement.^{18a} During the term of this agreement you have the right to:

- Run the products for which you timely order corresponding licenses or Upgrade Advantage subscriptions.
- Run any other language version of a product for which you have received a license confirmation, provided that the other language version is listed on the Product List and is available at the same or a lower price compared to the product and language identified in the license confirmation.
- Run up to 20 copies of any product in a dedicated training facility on your premises (this right extends only within your enterprise, not to other affiliates).^{18b}
- Run up to 10 copies of any product for a 60-day evaluation period (this right extends only within your enterprise, not to other affiliates).^{18c}
- Make and retain one copy of any licensed product for back-up or archival purposes for each of your distinct geographic locations.

18a. "Other rights during this agreement."

Handling Customer Objections

Customers may question that downgrade rights are not listed. Please note customers have downgrade rights with respect to software licensed under Enterprise as set out in the Product List.

A customer may ask, in addition to the rights set forth in section 6, for the right to copy the manuals, guides or other printed materials related to products for which it is ordering licenses.

It's a business call: revenue. If we are expecting revenue from such materials, we hurt ourselves by giving it away.

Pre-Approved Alternative

None Please discuss with your Business Desk contact .

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Annotated EA - Terms & Conditions

6. Other rights during this agreement.^{18a} During the term of this agreement you have the right to:

- Run the products for which you timely order corresponding licenses or Upgrade Advantage subscriptions.
- Run any other language version of a copy of a product for which you have received a license confirmation, provided that the other language version is listed on the Product List and is available at the same or a lower price compared to the product and language identified in the license confirmation.
- Run up to 20 copies of any product in a dedicated training facility on your premises (this right extends only within your enterprise, not to other affiliates).^{18b}
- Run up to 10 copies of any product for a 60-day evaluation period (this right extends only within your enterprise, not to other affiliates).^{18c}
- Make and retain one copy of any licensed product for back-up or archival purposes for each of your distinct geographic locations.

18b. "Run up to 20 copies of any product in a dedicated training facility on your premises (this right extends only within your enterprise, not to other affiliates)."

Handling Customer Objections

A customer may ask to have more than 20 copies for training, and/or to use them in a facility that's not exclusively dedicated for training.

Pre-Approved Alternative

Increase the number if you want (to a maximum of 100), bearing in mind that you should have a very good business case for each copy in excess of 20. It's a revenue issue, sort of. ***This pre-approved alternative is GREEN.***

Eliminate the limitation that it be used in a dedicated training facility? No: If you do that it winds up being just "some free licenses."

Section D

Annotated EA - Terms & Conditions

6. Other rights during this agreement.^{18a} During the term of this agreement you have the right to:
- Run the products for which you timely order corresponding licenses or Upgrade Advantage subscriptions.
 - Run any other language version of a product for which you have received a license confirmation, provided that the other language version is listed on the Product List and is available at the same or a lower price compared to the product and language identified in the license confirmation.
 - Run up to 20 copies of any product in a dedicated training facility on your premises (this right extends only within your enterprise, not to other affiliates).^{18b}
 - Run up to 10 copies of any product for a 60-day evaluation period (this right extends only within your enterprise, not to other affiliates).^{18c}
 - Make and retain one copy of any licensed product for back-up or archival purposes for each of your distinct geographic locations.

18c. "Run up to 10 copies of any product for a 60-day evaluation period (this right extends only within your enterprise, not to other affiliates)."

Handling Customer Objections

A customer may ask to have more than 10 copies for trying out new software and/or a longer evaluation period.

Although this seems similar to the issue of additional training copies above, it is even slightly harder to make sure that the evaluation copies are anything other than just "extra" copies: we do not get to rely on the limitation that they must be used in a dedicated training facility.

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

7. Use terms. Your right to run a copy of any version of any product is governed by the use terms applicable to the product and version licensed as of the date you first run that copy. We will either provide you a copy of the use terms in effect, or will make them available to you by publication on the World Wide Web at a site we identify to you or by some other means.¹⁹ You acknowledge that you have access to the World Wide Web.

19. "We will either provide you a copy of the use terms in effect, or will make them available to you by publication on the World Wide Web at a site we identify to you or by some other means."

Handling Customer Objections

The customer may want to know if we will freeze the use terms as of the date of the agreement - or if we'll guarantee that the use terms will never be less favorable than they are now.

See Section C, page 18.

Pre-Approved Alternative

Please discuss with your Business Desk contact.

Section D

Annotated EA - Terms & Conditions

8. Making copies. You may make as many copies as are necessary to distribute the products to your users within your enterprise. All copies must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source. You may also have a third party make and distribute such copies in your place, but you are responsible for their actions to the same extent you would be if they were your employees.²⁰ You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.²¹

20. "You may also have a third party make and distribute such copies in your place, but you are responsible for their actions to the same extent you would be if they were your employees."

Handling Customer Objections

- A customer may not wish to be liable for copies made by a third party.

The alternative to requiring a customer to be responsible for the acts of a replicator is to require some mechanism where Microsoft tells the customer who may (and who may not) replicate on its behalf and where Microsoft and the replicator enter into some contractual arrangement. At some point, we may have a workable Authorized Replicator program in place, but we do not yet. For now, we opted to leave the choice of replicator up to the customer and to rely on the customer's responsibility. If we make a change here, we would need at the same time to agree that we get the right to approve or reject the proposed replicator and that a signed Authorized Replication agreement acceptable to us is a significant transactional and operational costs, and for that reason we are, at this point, unwilling to accommodate requested changes along these lines. If the customer is unwilling to accept the risks of the actions of a third party replicator, it can either contractually require the replicator to protect it from those risks, or it may choose not to outsource the replication function.

- The customer may wish to avoid liability by using a Microsoft-approved software installer.

If the customer's employee installed the software, the customer would be legally responsible; this should still be the case if they make the decision to outsource. For a time, Microsoft had a Microsoft Installation Program in place where it entered into agreements with certain "Microsoft Software Installers." That program is not currently in effect. Remind customers that they can still go to Worldwide Fulfillment for media, rather than replicate disks themselves. This program has been discontinued and there is no longer a list of "Authorized Installers."

Pre-Approved Alternative

None

MS-PCA 1575047
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Section D

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8. **Making copies.** You may make as many copies as are necessary to distribute the products to your users within your enterprise. All copies must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source. You may also have a third party make and distribute such copies in your place, but you are responsible for their actions to the same extent you would be if they were your employees.²⁶ You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.²¹

Handling Customer Objections

A customer may want us to look at their notice to users or their internal software policy and give it our blessing.

We should try to avoid doing so because (i) it consumes our resources, and (ii) it tends to shift the burden and risk from them to us. (If anything later goes wrong, the customer could easily try to hide behind the fact that we reviewed their notice and policy: "You should have told us then if there was something more you thought we should be doing.")

Pre-Approved Alternative

None

21. *"You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement."*

Section D

Annotated EA - Terms & Conditions

9. Restrictions. Your rights under this agreement are limited as follows:

- We do not assign any copyright. Your rights are expressly limited to the rights described in this agreement and in the use terms.
- If a product is made up of components, you may not separate the components by running them on different computers, by upgrading or downgrading them at different times or by transferring them separately, except as otherwise provided in the use terms.
- You may not rent, lease or lend any copy of the product.
- You may not reverse engineer, decompile or disassemble the product, except to the extent expressly permitted by applicable law despite this limitation.
- **You may not export products (including software, documentation and technical detail and any software which you develop using products) in contravention of United States export restrictions, which apply to all Microsoft products.**^{22a} Export restrictions prohibit exporting or transmitting products to certain countries [as of May 1999 including, but not limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria and the Federal Republic of Yugoslavia (including Serbia but not Montenegro)] without consent from the appropriate US government agency. They also prohibit using or making the products available to others for use in the design, development or production of nuclear, chemical or biological weapons. For an up-to-date export classification of Microsoft products, please visit <http://www.microsoft.com/exporting/>. In addition, certain products containing encryption technology are available in two versions, one for US and Canada and the other for all other countries. These products are identified on the Product List. Depending on the foreign recipient and planned use, the export of the US/Canada versions may require an export license from the appropriate US government agency. More information can be found on the World Wide Web at <http://www.microsoft.com/exporting/>. You represent that neither you nor any of your affiliates signing an enrollment or named on any Affiliate Participation Form has had export privileges suspended, revoked or denied by a US government agency.
- Products licensed to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 are licensed with the rights and restrictions described in this agreement. Products licensed to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 are licensed with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable. You are responsible for ensuring that copies are marked with the "Restricted Rights Notice" or "Restricted Rights Legend," as required.^{22b} We reserve all rights not expressly granted to you.

22a. "You may not export products (including software, documentation and technical detail and any software which you develop using products) in contravention of United States export restrictions, which apply to all Microsoft products."

Handling Customer Objections

A customer may object to having to comply with export restrictions (or to having to promise us that they will).

Our software is subject to export restrictions. We want our customers to know that and to agree to comply. That way, we will be able to demonstrate to the appropriate regulators, should they ever inquire, that we are at least doing what we reasonably can to ensure compliance. The paragraph really doesn't ask a customer to do or promise anything that is not already required of the customer by U.S. law. Like the law of gravity, it will apply to the customer whether or not it is included in the agreement. We simply do not want them facilitating illegal export of our software or of software made with "redistributable" components from our software.

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

22b. "You are responsible for ensuring that copies are marked with the 'Restricted Rights Notice' or 'Restricted Rights Legend,' as required."

Handling Customer Objections

A customer may object to having to mark software with the restricted rights notice.

These types of concerns should be reviewed by the Business Desk.

Pre-Approved Alternative

None Please discuss with your Business Desk contact.

9. Restrictions. Your rights under this agreement are limited as follows:

- We do not assign any copyright. Your rights are expressly limited to the rights described in this agreement and in the use terms.
- If a product is made up of components, you may not separate the components by running them on different computers, by upgrading or downgrading them at different times or by transferring them separately, except as otherwise provided in the use terms.
- You may not rent, lease or lend any copy of the product.
- You may not reverse engineer, decompile or disassemble the product, except to the extent expressly permitted by applicable law despite this limitation.
- You may not export products (including software, documentation and technical detail and any software which you develop using products) in contravention of United States export restrictions, which apply to all Microsoft products.²² Export restrictions prohibit exporting or transmitting products to certain countries [as of May 1999 including, but not limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria and the Federal Republic of Yugoslavia (including Serbia but not Montenegro)] without consent from the appropriate US government agency. They also prohibit using or making the products available to others for use in the design, development or production of nuclear, chemical or biological weapons. For an up-to-date export classification of Microsoft products, please visit <http://www.microsoft.com/exporting/>. In addition, certain products containing encryption technology are available in two versions, one for US and Canada and the other for all other countries. These products are identified on the Product List. Depending on the foreign recipient and planned use, the export of the US/Canada versions may require an export license from the appropriate US government agency. More information can be found on the World Wide Web at <http://www.microsoft.com/exporting/>. You represent that neither you nor any of your affiliates signing an enrollment or named on any Affiliate Participation Form has had export privileges suspended, revoked or denied by a US government agency.
- Products licensed to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 are licensed with the rights and restrictions described in this agreement. Products licensed to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 are licensed with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable. **You are responsible for ensuring that copies are marked with the "Restricted Rights Notice" or "Restricted Rights Legend," as required.**^{22b} We reserve all rights not expressly granted to you.

10. Transfers of licenses. You may transfer licenses for which you have received license confirmations to an unaffiliated third party in connection with a merger, consolidation or divestiture. For all other transfers of licenses, our written consent is required.²³ Upgrade licenses may be transferred only if you also transfer the qualifying license. You must transfer the relevant license confirmations or, if transferring a portion of the licenses, you must provide a photocopy of the relevant license confirmations, along with a statement identifying the licenses being transferred. In addition, you must secure from the entity to which you are transferring the acceptance of the use terms and the provisions of sections 9 above and 12 below (restrictions and limitations of liability), and the acknowledgment of the fact that products transferred pursuant to this section 10 are transferred "as is", without warranty of any kind. You may transfer a license for an operating system product only as part of the sale or transfer of the computer system on which the product was first installed.²⁴ You may not transfer Upgrade Advantage subscription rights to, or use such rights for the benefit of, a third party other than an affiliate identified on the Affiliate Participation Form.²⁵ Licenses cannot be transferred on a short-term basis.

23. "You may transfer licenses for which you have received license confirmations to an unaffiliated third party in connection with a merger, consolidation or divestiture. For all other transfers of licenses, our written consent is required."

NOTE: Section 5 deals with sublicense and transfer of licenses to affiliates listed on the Affiliate Participation Form. No Microsoft consent is needed for either sublicense or transfer under that section.

Handling Customer Objections

A customer may object to being required to obtain our consent for transfers to third parties.

Select and EAs are intended to provide pricing discounts to our customers and their affiliates based on their aggregated consumption of Microsoft software. They are not intended to allow the customer to become an alternative distribution channel or to share its volume pricing outside of its affiliate "family." These provisions attempt to prevent those kinds of activities, as well as pass through general restrictions on transferability to which all Microsoft licenses are subject. We will agree, however, that our consent won't be unreasonably withheld. **See the GREEN pre-approved alternative below.**

Pre-Approved Alternative

Transfers of licenses. You may transfer licenses for which you have received license confirmations to an unaffiliated third party in connection with a merger, consolidation or divestiture. For all other transfers of licenses, our written consent is required, but we will not withhold it unreasonably. Upgrade licenses may be transferred only if you also transfer the qualifying license. You must transfer the relevant license confirmations or, if transferring a portion of the licenses, you must provide a photocopy of the relevant license confirmations, along with a statement identifying the licenses being transferred. In addition, you must secure from the entity to which you are transferring the acceptance of the use terms and the provisions of sections 9 above and 12 below (restrictions and limitations of liability), and the acknowledgment of the fact that products transferred pursuant to this section 10 are transferred "as is", without warranty of any kind. You may transfer a license for an operating system product only as part of the sale or transfer of the computer system on which the product was first installed. You may not transfer Upgrade Advantage subscription rights to, or use such rights for the benefit of, a third party other than an affiliate identified on the Affiliate Participation Form. Licenses cannot be transferred on a short-term basis.

This alternative is GREEN.

Section D

Annotated EA - Terms & Conditions

10. Transfers of licenses. You may transfer licenses for which you have received license confirmations to an unaffiliated third party in connection with a merger, consolidation or divestiture. For all other transfers of licenses, our written consent is required.²³ Upgrade licenses may be transferred only if you also transfer the qualifying license. You must transfer the relevant license confirmations or, if transferring a portion of the licenses, you must provide a photocopy of the relevant license confirmations, along with a statement identifying the licenses being transferred. In addition, you must secure from the entity to which you are transferring the acceptance of the use terms and the provisions of sections 9 above and 12 below (restrictions and limitations of liability), and the acknowledgment of the fact that products transferred pursuant to this section 10 are transferred "as is", without warranty of any kind. **You may transfer a license for an operating system product only as part of the sale or transfer of the computer system on which the product was first installed.**²⁴ You may not transfer Upgrade Advantage subscription rights to, or use such rights for the benefit of, a third party other than an affiliate identified on the Affiliate Participation Form.²⁵ Licenses cannot be transferred on a short-term basis.

24. "You may transfer a license for an operating system product only as part of the sale or transfer of the computer system on which the product was first installed."

Handling Customer Objections

A customer may ask that we eliminate the restriction on the transfer of an operating system.

Select and EA licenses for 32-bit operating systems may be transferred only as part of a transfer of the hardware on which the operating system was first installed. While this is more restrictive than our retail EULA, it is consistent with the way these products are licensed through OEMs. It is intended to help cut down on traffic

in "naked" machines (that is, machines with no operating system - fertile grounds for piracy).

For related discussion, refer to the Enterprise Sign Up Form, part VI (Footnote #3), and the Terms & Conditions, section 3 (Footnote #12), and section 4 (Footnote #15).

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

10. Transfers of licenses. You may transfer licenses for which you have received license confirmations to an unaffiliated third party in connection with a merger, consolidation or divestiture. For all other transfers of licenses, our written consent is required.²³ Upgrade licenses may be transferred only if you also transfer the qualifying license. You must transfer the relevant license confirmations or, if transferring a portion of the licenses, you must provide a photocopy of the relevant license confirmations, along with a statement identifying the licenses being transferred. In addition, you must secure from the entity to which you are transferring the acceptance of the use terms and the provisions of sections 9 above and 12 below (restrictions and limitations of liability), and the acknowledgment of the fact that products transferred pursuant to this section 10 are transferred "as is", without warranty of any kind. You may transfer a license for an operating system product only as part of the sale or transfer of the computer system on which the product was first installed.²⁴ You may not transfer Upgrade Advantage subscription rights to, or use such rights for the benefit of, a third party other than an affiliate identified on the Affiliate Participation Form.²⁵ Licenses cannot be transferred on a short-term basis.

25. "You may not transfer Upgrade Advantage subscription rights to, or use such rights for the benefit of, a third party other than an affiliate identified on the Affiliate Participation Form."

Handling Customer Objections

A customer may push for Microsoft to cancel Upgrade Advantage fees for licenses that are transferred to a non-affiliate.

When transferring licenses enrolled in UA, the customer transfers the qualifying license and the license to any upgrades installed prior to transfer (evidenced by transferring (a copy of) the license confirmation showing the UA subscription for the product transferred), but it cannot transfer the rights to future upgrades under the UA subscription (that means, UA subscription rights for the future terminate on transfer). This is justified since if the license has already been upgraded under an UA subscription, the benefit of the UA subscription has been realized. If a license transferred under this section is covered by UA but no upgrade of the product has been made under the agreement, the qualifying license is transferred without any upgrade rights and the UA subscription can be applied by the customer (i.e. the related license confirmation is not transferred) to another qualifying license (for the same product within the customer's enterprise).

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

11. Warranties and other obligations of Microsoft.

a. Limited product warranty. We warrant that each product will perform substantially in accordance with its Microsoft-published user documentation. This warranty is valid for a period of 90 days from the date you first order (or should have ordered) a license for the version of the product. For products run pursuant to an Upgrade Advantage subscription, the warranty is valid for a period of 90 days from the date you first run the version of the product from any computer or similar device.²⁶ Any warranties imposed by law concerning the products are limited to the same 90 day period. The warranty is not applicable if failure of the product has resulted from accident, abuse or misapplication. If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid or (ii) repair or replace the product. This is your exclusive remedy for breach of this warranty.²⁷

it. Although the warranty period doesn't start during this evaluation period, it gives the customer additional time to test for defects. Since software isn't likely to deteriorate over time, if the problem isn't there during the first 90 days, it probably won't develop later. This provision gives Microsoft some point at which it can say a particular transaction is truly over and done with.

26. "For products run pursuant to an Upgrade Advantage subscription, the warranty is valid for a period of 90 days from the date you first run the version of the product from any computer or similar device."

Handling Customer Objections

The customer may ask for a longer warranty term.

The 90-day period gives a customer ample time to make copies, use the software and find out if what we've given is defective. Additionally, in section 6 the customer has the right to evaluate the product for 60 days prior to ordering. Since the customer has the right to test for defects, it probably won't develop later. This provision gives the customer additional time to test for defects. Since software isn't likely to deteriorate over time, if the problem isn't there during the first 90 days, it probably won't develop later. This provision gives Microsoft some point at which it can say a particular transaction is truly over and done with.

Pre-Approved Alternative

None

Section D

Annotated EA - Terms & Conditions

11. Warranties and other obligations of Microsoft.

a. Limited product warranty. We warrant that each product will perform substantially in accordance with its Microsoft-published user documentation. This warranty is valid for a period of 90 days from the date you first order (or should have ordered) a license for the version of the product. For products run pursuant to an Upgrade Advantage subscription, the warranty is valid for a period of 90 days from the date you first run the version of the product from any computer or similar device.²⁶ Any warranties imposed by law concerning the products are limited to the same 90 day period. The warranty is not applicable if failure of the product has resulted from accident, abuse or misapplication. **If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid or (ii) repair or replace the product. This is your exclusive remedy for breach of this warranty.**²⁷

27. "If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid or (ii) repair or replace the product. This is your exclusive remedy for breach of this warranty."

Handling Customer Objections

The customer may push for a refund commitment.

This provision is consistent with Microsoft's company-wide limited warranty; any change would make it inconsistent. If we can repair or reasonably replace the product and it is a product that works properly, so a refund is not called for. It allows the customer, at its option, to unravel the bargain.

choose to do so, that puts the customer in the position it bargained for (i.e., it has a product that works properly), so a refund is not called for. Requiring a refund does more than put the customer in the position it bargained for: it allows the customer, at its option, to unravel the bargain.

Pre-Approved Alternative

None

11. Warranties and other obligations of Microsoft.

b. Year 2000 warranty. For purposes of this section, "Year 2000 Warranted Product" means the specific version of each product identified in the Product Guide on the effective date, by version number and language, as "compliant" or "compliant with minor issues", and "Product Guide" means the Microsoft Year 2000 Product Guide located on the Microsoft Year 2000 Resource Center web page (<http://microsoft.com/year2000/>).²⁸ We warrant that each Year 2000 Warranted Product, when run with accurate date data and in accordance with its documentation and the recommendations and exceptions set forth in the Product Guide, will recognize the year 2000 as a leap year and will not produce material errors processing date data in connection with the year change from 1999 to 2000, as long as, and only to the extent that, all other information technology used in combination with such Year 2000 Warranted Product (e.g., software, firmware, hardware) properly exchanges date data with it. This warranty does not extend or apply to user customizable features or third-party add-on features or products, including items such as macros and custom programming or formatting features. If you report to us on or before June 1, 2000 that a product does not meet this warranty, we will: (i) exercise commercially reasonable efforts to correct any material non-compliance which is generally reported by other users; and (ii) provide any resulting correction to you, without charge, when it is made available generally. This is your exclusive remedy for breach of this warranty.²⁹

effective date, including them in the warranty is less clear-cut: it is difficult to warrant the performance of something that does not yet exist, and which could therefore not possibly have been tested.

Pre-Approved Alternative

None, please discuss with your Business Desk contact.

28. "For purposes of this section, 'Year 2000 Warranted Product' means the specific version of each product identified in the Product Guide on the effective date, by version number and language, as 'compliant' or 'compliant with minor issues', and 'Product Guide' means the Microsoft Year 2000 Product Guide located on the Microsoft Year 2000 Resource Center web page (<http://microsoft.com/year2000/>)."

Handling Customer Objections

A customer might object to the condition that the product be in the Product Guide "on the effective date."

It is probably both reasonable and reasonably safe to broaden the warranty to include successors to any product/version that is identified as "compliant" on the effective date. As to entirely new products that are added to the Select/Enterprise product offering after the warrant the performance of something that does not yet exist,

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11. Warranties and other obligations of Microsoft.

b. Year 2000 warranty. For purposes of this section, "Year 2000 Warranted Product" means the specific version of each product identified in the Product Guide on the effective date, by version number and language, as "compliant" or "compliant with minor issues", and "Product Guide" means the Microsoft Year 2000 Product Guide located on the Microsoft Year 2000 Resource Center web page (<http://microsoft.com/year2000/>).²⁸ We warrant that each Year 2000 Warranted Product, when run with accurate date data and in accordance with its documentation and the recommendations and exceptions set forth in the Product Guide, will recognize the year 2000 as a leap year and will not produce material errors processing date data in connection with the year change from 1999 to 2000, as long as, and only to the extent that, all other information technology used in combination with such Year 2000 Warranted Product (e.g., software, firmware, hardware) properly exchanges date data with it. This warranty does not extend or apply to user customizable features or third-party add-on features or products, including items such as macros and custom programming or formatting features. If you report to us on or before June 1, 2000 that a product does not meet this warranty, we will: (i) exercise commercially reasonable efforts to correct any material non-compliance which is generally reported by other users; and (ii) provide any resulting correction to you, without charge, when it is made available generally. This is your exclusive remedy for breach of this warranty.²⁹

29. "If you report to us on or before June 1, 2000 that a product does not meet this warranty, we will: (i) exercise commercially reasonable efforts to correct any material non-compliance which is generally reported by other users; and (ii) provide any resulting correction to you, without charge, when it is made available generally. This is your exclusive remedy for breach of this warranty."

Handling Customer Objections

- A customer may object to the condition that the non-compliance be reported by others.

If a problem is not generally reported by others, it is likely that the problem is caused by the customer's environment, and not by Microsoft's software. If the problem is truly in the software, we would expect it to be experienced and reported by a number of customers.

- A customer may want Microsoft to make a commitment to make a correction generally available and/or allow them to collect for damages or collect a refund.

Without knowing what the problem is, or what product it may exist in, it is impossible to commit strictly to delivering a fix. We want to stand behind our products, but are not especially interested in offering increased opportunities for our customers to sue us. Consequently we have committed to exercising reasonable efforts to correct Y2K problems that we discover in "compliant" products, but not to take on additional exposure to damages. To us, that is standing behind our products.

- A customer may want Microsoft to extend the Y2K warranty period.

The European agreement contains an extension of the warranty reporting date, which may also be added to NA agreements if requested. See the **GREEN pre-approved alternative below**.

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Pre-Approved Alternative

If you report to us on or before June 1, 2000 that a product does not meet this warranty, we will: (i) exercise reasonable efforts to correct any material non-compliance which is generally reported by other users; and (ii) provide any resulting correction to you, without charge, when it is available generally for distribution. *This is your exclusive remedy for any failure of a product to function as described in this section 11b, or for any other Year 2000-related failure of a product. The reporting date as described above will be extended to January 1, 2001 for the following products and future versions thereof: Windows NT Workstation 4.0 & 3.51, Windows 98 & 95, Windows NT Server 4.0 & 3.51, SQL Server 6.5 & 7.0, Microsoft Exchange 5.5, Site Server 3.0; SNA Server 4.0, Systems Management Server 1.2, Proxy Server 2.0, Internet Information Server 4.0, Office 97 & 95 (Microsoft Word, Excel, Access, Outlook, PowerPoint), Works 4.0-4.5a, Visual C++ 6.0, Visual Basic 6.0, Visual Fox Pro 6.0, Visual J++ 6.0 and Visual SourceSafe 6.0.*

This alternative is GREEN.

11. Warranties and other obligations of Microsoft.

c. **Defense of copyright infringement claim.** We will defend you against a claim by an unaffiliated third party that any product infringes its copyright and pay the amount of any resulting adverse final judgment (or settlement to which we consent); provided you notify us promptly in writing of the claim and give us sole control over its defense or settlement.³⁰ You agree to provide us with reasonable assistance in defending the claim.

We will not be liable for any copyright infringement claim to the extent that the claim is based on your (i) running of the product after we notify you to discontinue running due to such a claim; or (ii) combining the product with a non-Microsoft product, program or data; or (iii) altering the product. You will reimburse us for any costs or damages that result from these actions.³¹

If we receive information concerning a copyright infringement claim related to a product, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product, or (ii) replace or modify the product to make it non-infringing, in which case, you must stop running the allegedly infringing product immediately.³²

If any other third party claim is brought against you or any of your affiliates regarding intellectual-property of Microsoft, you must notify us promptly. We may, at our option, choose to treat these claims in the same way as we treat a copyright infringement claim.

General Discussion:

Many customers are concerned about becoming the target of a lawsuit alleging that their use of the software licensed from Microsoft constitutes an infringement of some third party's copyright or patent or a misappropriation of some third party's trade secret. Historically, this hasn't happened; while Microsoft has been sued for alleged infringement, our end-users have not been included as defendants. They are concerned about the expense that would be involved in defending such a lawsuit (which could conceivably amount to several hundreds of thousands of dollars), the damages that they might be ordered to pay, and the risk that their continued use of the software might be enjoined. They want to be protected against those risks (Intellectual Property Indemnification). Microsoft does not provide Intellectual Property Indemnification in its retail licenses (nor, in fact, do many other software vendors) or in Open.

Prior to version 4.0 of Select, Microsoft did not offer Intellectual Property Indemnification as a standard feature; most large customers asked for it and Microsoft wound up providing some accommodation in many cases. On a very practical level, we were always relatively confident that even without a contractual provision requiring it, we would in all probability protect our customers from those risks for a number of strong business reasons:

- (1) failure to protect a customer would be horrible for customer satisfaction;
- (2) it would also be horrible publicity; and
- (3) since the integrity of our intellectual property is at issue, we want to be able to control the litigation.

A review of competitors' volume licensing programs showed that many offered something in the way of intellectual property indemnification, so we decided to include this protection as a standard program feature in Select 4.0, and we have enlarged the protection in the 4.1 versions of Select and Enterprise.

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The standard offering does NOT warrant that Microsoft has title or the right to license or that the software is non-infringing: it simply requires Microsoft to defend the lawsuit and pay resulting damage awards if the customer is sued on a claim that the Microsoft software it is using infringes a third party's copyright. That is a subtle distinction, but it is an important one. Our promise to defend triggers responsibility only if our customer gets sued. Our provision:

- covers claims of copyright infringement, but not patent or trademark infringement or trade secret misappropriation
- requires the customer to provide us notice of the claim and the right to control the defense and to provide reasonable cooperation/assistance
- permits Microsoft to replace or modify the product so that it is no longer infringing, and requires the customer to stop using the allegedly infringing product as soon as that has happened
- is subject to a cap on our exposure equal to the amount the customer has spent under the agreement with respect to the allegedly infringing product

11. Warranties and other obligations of Microsoft.

c. Defense of copyright infringement claim. We will defend you against a claim by an unaffiliated third party that any product infringes its copyright and pay the amount of any resulting adverse final judgment (or settlement to which we consent); provided you notify us promptly in writing of the claim and give us sole control over its defense or settlement.³⁰ You agree to provide us with reasonable assistance in defending the claim.

We will not be liable for any copyright infringement claim to the extent that the claim is based on your (i) running of the product after we notify you to discontinue running due to such a claim; or (ii) combining the product with a non-Microsoft product, program or data; or (iii) altering the product. You will reimburse us for any costs or damages that result from these actions.³¹

If we receive information concerning a copyright infringement claim related to a product, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product, or (ii) replace or modify the product to make it non-infringing, in which case, you must stop running the allegedly infringing product immediately.³²

If any other third party claim is brought against you or any of your affiliates regarding intellectual property of Microsoft, you must notify us promptly. We may, at our option, choose to treat these claims in the same way as we treat a copyright infringement claim.

30. *"We will defend you against a claim by an unaffiliated third party that any product infringes its copyright and pay the amount of any resulting adverse final judgment (or settlement to which we consent); provided you notify us promptly in writing of the claim and give us sole control over its defense or settlement."*

Handling Customer Objections

A customer may push for other types of intellectual property protection (i.e., patent, trade secret, trademark, etc.)

Patent infringement involves a different standard of wrongdoing than copyright infringement. Copyright infringement requires that we did something wrong: that we saw and copied someone else's code. If we didn't copy their work but came up with a similar or identical product on our own, then it isn't copyright infringement. Patent infringement, on the other hand requires no

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wrongdoing; if someone else had an idea and patented it, then even if we never knew of their invention and came up with a similar idea on our own, our idea is still infringing. We have drawn the line between copyright and patent infringement because we are willing to commit contractually to bear the brunt of our wrongful acts but not necessarily our innocent ones.

We do not cover claims of trade secret misappropriation since such claims, by definition, include an allegation that the customer has done something it should not have done; this is very different from a claim of copyright infringement. If our software infringes a copyright and the customer is using a copy of that software, it is infringing; if our software contains a misappropriated trade secret that the customer had no reason to know about, the customer is not guilty of misappropriation. We shouldn't be forced to indemnify a customer against a claim that involves its own culpability.

We aren't giving the customer permission to use any trademarks (only the software), so we shouldn't be asked to defend it against claims that its use of those marks infringe.

Pre-Approved Alternative

None

11. Warranties and other obligations of Microsoft.

c. Defense of copyright infringement claim. We will defend you against a claim by an unaffiliated third party that any product infringes its copyright and pay the amount of any resulting adverse final judgment (or settlement to which we consent); provided you notify us promptly in writing of the claim and give us sole control over its defense or settlement.30 You agree to provide us with reasonable assistance in defending the claim.

We will not be liable for any copyright infringement claim to the extent that the claim is based on your (i) running of the product after we notify you to discontinue running due to such a claim; or (ii) combining the product with a non-Microsoft product, program or data; or (iii) altering the product. You will reimburse us for any costs or damages that result from these actions.³¹

If we receive information concerning a copyright infringement claim related to a product, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product, or (ii) replace or modify the product to make it non-infringing, in which case, you must stop running the allegedly infringing product immediately.³²

If any other third party claim is brought against you or any of your affiliates regarding intellectual property of Microsoft, you must notify us promptly. We may, at our option, choose to treat these claims in the same way as we treat a copyright infringement claim.

obligated to suffer the consequences. It is frequently possible to give a customer the language that works varies greatly from customer to customer, so it is not possible to offer any single pre-approved alternative. Instead, if you run into this issue, you should talk to your Business Desk contact for assistance.

Pre-Approved Alternative

None

31. "We will not be liable for any copyright infringement claim to the extent that the claim is based on your (i) running of the product after we notify you to discontinue running due to such a claim; or (ii) combining the product with a non-Microsoft product, program or data; or (iii) altering the product. You will reimburse us for any costs or damages that result from these actions."

Handling Customer Objections

A customer may press for specific guidelines as to what constitutes combining the product with a non-Microsoft product, program or data (e.g., "does this mean that every time that I add data to an Excel spreadsheet that I'm combining data and therefore trigger this exception?")

Our intent here is to draw a line between cases in which Microsoft causes the problem and when the customer does: if they caused the problem, we should not be the clarification or comfort it seeks on this point, but the

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11. Warranties and other obligations of Microsoft.

d. NO OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ON OUR OWN BEHALF AND ON BEHALF OF OUR AFFILIATES ALL WARRANTIES OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS SECTION 11, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS AND RELATED MATERIALS.³³

33. " TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ON OUR OWN BEHALF AND ON BEHALF OF OUR AFFILIATES ALL WARRANTIES OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS SECTION 11, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS AND RELATED MATERIALS. "

Handling Customer Objections

The customer may push for a warranty of title and non-infringement.

Everything we intend to do in connection with the issues of title and non-infringement is covered in section 11(c). We are willing to protect our customers from the risk of being sued, but we are not eager to create additional grounds upon which the customer might initiate a lawsuit. A warranty of title and/or non-infringement, as distinguished from the duty to defend we provide in section 11(c), would allow the customer to bring a lawsuit against Microsoft even if no third party has complained. The customer could even join a third party's action against Microsoft, even if there is no effect on the customer.

Pre-Approved Alternative

None

12. Limitation of liability.

a. Limitation. There may be situations in which you have a right to claim damages from us. Whatever the basis for your claim (such as breach of contract or tort), our liability will be limited to direct damages up to the amount you have paid under this agreement with respect to the product giving rise to your claim.³⁴

34. "There may be situations in which you have a right to claim damages from us. Whatever the basis for your claim (such as breach of contract or tort), our liability will be limited to direct damages up to the amount you have paid under this agreement with respect to the product giving rise to your claim."

Handling Customer Objections

The customer may ask the following:

- Will you eliminate, or at least raise, the cap?
- Will you exclude costs of defense from the cap?

Microsoft does not wish to "bet the whole company" on a single Select or Enterprise agreement. We insist on a limit of our exposure, and one that is related to the value of the agreement to us. The most reliable and consistent measure of the value of an agreement is the amount the customer has spent under the agreement. The same limitation, in essence, is found in Microsoft's retail licenses and in those of most of our competitors.

- Eliminate or raise the cap?

See Section C, page 21.

- Exclude the duty to defend intellectual property claims (or other specific liabilities) from the cap?

The customer may claim that it is not fair to burden them with any risk of infringement damages in excess of a cap on a product we (not they) design and license. Our first response is that the cap is the cap - it's not a cap on infringement liability, but all liability. As a practical matter, barring a bizarre outcome, an end user's liability should be less than the cap, because infringement damages are typically assessed as a reasonable percentage of royalties. **If this is a major sticking point with the customer, you may use the RED pre-approved alternative below.**

Pre-Approved Alternative

Limitation. There may be situations in which you have a right to claim damages from us. Whatever the basis for your claim (such as breach of contract or tort), our liability will be limited to direct damages up to the amount you have paid under this agreement, *exclusive of any amounts expended defending against claims of infringement pursuant to section 11(c), above*, with respect to the product giving rise to your claim.

This alternative is RED.

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12. Limitation of liability.

b. No liability for consequential damages. To the maximum extent permitted by applicable law, in no event will we or any of our affiliates or suppliers be liable for any indirect damages (including, without limitation, consequential damages, damages for loss of profits or revenues, business interruption, loss of business information, or other loss) arising in connection with this agreement, any enrollment or product, even if advised of the possibility of such damages.³⁵

even if advised of the possibility of such damages."

Handling Customer Objections

The customer may ask that we:

- *eliminate this provision*

No. This provision tries to draw a line between "direct" and "consequential" damages. The former bear some rational relationship to the fees a customer pays for a license, and can be foreseen or estimated, at least somewhat. The latter are unpredictable and virtually without limit. In the commercial context, the most usual consequential damage is lost profits. If the customer licenses a copy of Word for \$100, and it is so flawed that they cannot get it to run, their "direct" damages are probably the amount it would take to get a copy that would run, or failing that, the cost of some reasonably equivalent word processing software: somewhere in the ballpark of \$100. If, because the \$100 software didn't work on Thursday afternoon, the customer missed a deadline on a \$1,000,000 grant proposal, the "consequential" damages could be in excess of \$1,000,000. It is standard industry practice to exclude consequential damages with respect to software.

- *make this provision mutual*

In theory, the "what's-good-for-you-should-be-good-for-me-too" approach is appealing. The problem is that when two parties have different exposures, different risks, creating mirror-image protections does not always make sense and is not always reasonable. In Select, and in Enterprise agreements, we provide the customer a license to use a software product. There is inevitably a bug somewhere in the software; it's just a matter of when, where, and in combination with what it will show up. The software is used to enhance a customer's productivity, so we can reasonably anticipate that if the software malfunctions there will be productivity loss, tech support time consumed, etc. Presumably those risks get reflected in the price of the software. Other than a duty to order the right number of licenses, a customer really has few obligations other than to refrain from doing things with and to the software that it is promising not to do in the first place. What is it that a customer anticipates might happen that might cause it to be liable for consequential damages? Decompile our software and broadcast the source code on the

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Internet? The only compromise that ought to be acceptable to Microsoft would be to grant a reciprocal disclaimer of consequential damages coupled with an exception to that general policy for consequential damages arising from the infringement or misappropriation of the other party's intellectual property rights, *as follows in the YELLOW pre-approved alternative below.*

Pre-Approved Alternative

No liability for consequential damages. *Except as specifically provided in the following sentence, to the maximum extent permitted by applicable law, in no event will either party, or any of their affiliates or suppliers, be liable to the other party for any indirect damages suffered by the other party (including, without limitation, consequential damages, damages for loss of profits or revenues, business interruption, loss of business information, or other loss) arising in connection with this agreement, any enrollment or product, even if advised of the possibility of such damages. This exclusion of liability for indirect damages shall not apply to damages arising from a party's violation of the other party's intellectual property rights.*

This alternative is YELLOW, and is limited to depth customers.

13. Verifying compliance. You must keep records relating to the products you and your affiliates run. These records must be sufficient to allow us to verify compliance with your obligations under this agreement and must include information relating to licenses you have sublicensed to affiliates.³⁶ We have the right to verify your compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm.³⁷ Verification will take place upon not less than three business days' notice, during normal business hours and in a manner that does not interfere unreasonably with your operations.³⁸ As an alternative, we may require you to accurately complete a self-audit questionnaire on behalf of yourself and/or your affiliates in a form we provide. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all software usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and must acquire the necessary additional licenses as single retail licenses.³⁹ If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification for at least one year. We will use any information obtained in connection with compliance verification only to enforce our rights and to determine whether you are properly licensed for the products you are running and are in compliance with the terms of this agreement.

- the customer is close (in which case the customer orders enough licenses to satisfy the shortfall at single retail prices); or
 - the customer has substantially fewer licenses than it needs to have based on the amount of software it is using (in which case, the customer must order enough licenses to satisfy the shortfall at single retail prices)
- Customers are justifiably concerned about the intrusiveness of an audit. In response to those concerns, we have built into the audit provision a number of protections for the customer:
- Our right to audit expires one year after the agreement terminates.
 - The audit must be conducted upon 3 days notice during normal business hours and in a manner that doesn't unreasonably interfere with the customer's operations.
 - The audit must be conducted by independent CPAs (to protect against Microsoft employees snooping).
 - Microsoft and its affiliates will hold all audit information in confidence.
 - If Microsoft audits the customer and they are found to be compliant, we cannot re-audit for one year.

General Discussion:

Microsoft needs to have some mechanism in place to make sure it is enjoying all the revenue it is entitled to under the agreement. An audit provision is customary in arrangements where the seller or licensor is dependent on the buyer/licensee to tell it how much revenue it is entitled to: commercial leases where a portion of the rent is based on a percentage of sales from the leased premises; oil and gas mining leases; patent licenses; etc. Our purpose is not to interfere in a customer's business, it is only to make sure we are fairly compensated for the customer's use of Microsoft software.

The audit, or compliance verification, as we have chosen to call it, will tell us either that:

- the customer is properly licensing Microsoft products (in which case Microsoft bears the cost of the audit);

Microsoft bears the shortfall, but Microsoft still bears the

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NOTE: The alternative of a self-audit is new: "As an alternative, we may require you to accurately complete a self-audit questionnaire on behalf of yourself and/or your affiliates in a form we provide." *Self-audits have been used successfully as part of anti-piracy efforts where volume customers are suspected of being under-licensed. This provision was added to give Microsoft the option of requiring the customer to complete a self-audit where we think this can be completed reliably, instead of going to the expense (and customer resistance) of requiring a third-party audit.*

13. Verifying compliance. You must keep records relating to the products you and your affiliates run. These records must be sufficient to allow us to verify compliance with your obligations under this agreement and must include information relating to licenses you have sublicensed to affiliates.³⁶ We have the right to verify your compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm.³⁷ Verification will take place upon not less than three business days' notice, during normal business hours and in a manner that does not interfere unreasonably with your operations.³⁸ As an alternative, we may require you to accurately complete a self-audit questionnaire on behalf of yourself and/or your affiliates in a form we provide. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all software usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and must acquire the necessary additional licenses as single retail licenses.³⁹ If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification for at least one year. We will use any information obtained in connection with compliance verification only to enforce our rights and to determine whether you are properly licensed for the products you are running and are in compliance with the terms of this agreement.

36. "You must keep records relating to the products you and your affiliates run. These records must be sufficient to allow us to verify compliance with your obligations under this agreement and must include information relating to licenses you have sublicensed to affiliates."

Handling Customer Objections

The customer may ask that we limit an audit to their software books and records.

That is not an acceptable alternative. By its very nature, an audit may require a comparison of the physical evidence with the books and records: we already know how many licenses they've ordered; what we need to know is how that relates to how many copies are installed or in use.

Pre-Approved Alternative

None

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13. **Verifying compliance.** You must keep records relating to the products you and your affiliates run. These records must be sufficient to allow us to verify compliance with your obligations under this agreement and must include information relating to licenses you have sublicensed to affiliates.³⁶ We have the right to verify your compliance, at our expense, during the term of this agreement and for a period of one year thereafter. **To do so, we will engage an independent accountant from a nationally recognized public accounting firm.**³⁷ Verification will take place upon not less than three business days' notice, during normal business hours and in a manner that does not interfere unreasonably with your operations.³⁸ As an alternative, we may require you to accurately complete a self-audit questionnaire on behalf of yourself and/or your affiliates in a form we provide. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all software usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and must acquire the necessary additional licenses as single retail licenses.³⁹ If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification for at least one year. We will use any information obtained in connection with compliance verification only to enforce our rights and to determine whether you are properly licensed for the products you are running and are in compliance with the terms of this agreement.

37. "To do so, we will engage an independent accountant from a nationally recognized public accounting firm."

Handling Customer Objections

A customer may ask:

- Will your auditors sign our NDA?

Perhaps, if we and they can see and agree to the terms in advance.

- Will your auditors agree to be escorted?

Of course. But the escort cannot be allowed to interfere with their conduct of the audit, and unavailability of an escort shouldn't be an excuse for delaying the audit.

- Will your auditors agree to abide by our security regulations?

Of course, but we (and they) need to understand those rules in advance.

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None See your Business Desk for assistance with custom solutions.

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13. Verifying compliance. You must keep records relating to the products you and your affiliates run. These records must be sufficient to allow us to verify compliance with your obligations under this agreement and must include information relating to licenses you have sublicensed to affiliates.³⁶ We have the right to verify your compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm.³⁷ **Verification will take place upon not less than three business days' notice, during normal business hours and in a manner that does not interfere unreasonably with your operations.**³⁸ As an alternative, we may require you to accurately complete a self-audit questionnaire on behalf of yourself and/or your affiliates in a form we provide. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all software usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and must acquire the necessary additional licenses as single retail licenses.³⁹ If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification for at least one year. We will use any information obtained in connection with compliance verification only to enforce our rights and to determine whether you are properly licensed for the products you are running and are in compliance with the terms of this agreement.

38. *"Verification will take place upon not less than three business days' notice, during normal business hours and in a manner that does not interfere unreasonably with your operations."*

Handling Customer Objections

A customer may want more than 3 days' notice.

The problem with much notice is that it eliminates some of the customer's incentive to keep accurate track of their software usage on a regular basis: "we can put things in order if and when we've been notified of an audit." The primary purpose of the audit is to make sure that the customer's processes work on an on-going basis, not just in response to a special event.

Pre-Approved Alternative

None

13. **Verifying compliance.** You must keep records relating to the products you and your affiliates run. These records must be sufficient to allow us to verify compliance with your obligations under this agreement and must include information relating to licenses you have sublicensed to affiliates.³⁶ We have the right to verify your compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm.³⁷ Verification will take place upon not less than three business days' notice, during normal business hours and in a manner that does not interfere unreasonably with your operations.³⁸ As an alternative, we may require you to accurately complete a self-audit questionnaire on behalf of yourself and/or your affiliates in a form we provide. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all software usage disclosed. **If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and must acquire the necessary additional licenses as single retail licenses.**³⁹ If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification for at least one year. We will use any information obtained in connection with compliance verification only to enforce our rights and to determine whether you are properly licensed for the products you are running and are in compliance with the terms of this agreement.

39. "If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and must acquire the necessary additional licenses as single retail licenses."

Handling Customer Objections

A customer may ask that we increase the discrepancy threshold.

As it stands, we treat anything up to a 5% discrepancy simply as a mistake; we do not require the customer to do anything other than order the licenses they should have ordered in the first place. Certainly, we could extend that same treatment to a 6% or an 8% or a 50% discrepancy, but each time we do, we signal a willingness to tolerate unlicensed use of our software and encourage the customer to be increasingly careless with the process that is supposed to result in Microsoft being fairly compensated for the use of its software.

In the context of an Enterprise agreement, this really should not be a significant issue. The customer is already licensing the standard desktop products throughout its defined enterprise: other than being wildly inaccurate in its employee or computer count, it is hard to imagine what an Enterprise customer might do that would result in a 5% license shortfall. The net here, as it is in standard Select, is that we treat reasonable discrepancies as understandable mistakes, and the consequences for under licensing do not kick-in until a significant threshold has been crossed.

The customer may object to having to purchase any additional licenses required as single retail licenses. Select/Enterprise offers customers very favorable volume discount pricing, conditioned on the customer ordering a license for each copy of Microsoft software which it uses (or under EA, reporting each Qualified Desktop). When a customer breaches the trust on which Select/Enterprise is based by significantly under-licensing, it is fair that the customer should not enjoy the benefits of Select/Enterprise for the number of licenses which have been underreported. Of course, Microsoft could terminate the agreement based on a significant breach by the customer (in addition seeking damages). Requiring purchases of the necessary number of additional licenses at normal retail prices is a less far-reaching response to the customer's breach and one that preserves the relationship with the customer.

Pre-Approved Alternative:

None

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14. **Term and Termination.** This agreement will remain in effect for 36 full calendar months following the effective date, unless terminated by either party for cause.⁴⁰ Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure.⁴¹ If you fail to submit your orders, or to pay any amount owed for your orders, we can terminate this agreement.

Upon expiration or termination, you must promptly order licenses for all copies of products you have run for which you have not yet submitted orders. Upon termination, any deferred Upgrade Advantage subscription fees become immediately due and payable.⁴²

You may elect to extend the term of this agreement for an additional 12 months.⁴³ To do so, you must notify us in writing 60 days prior to the third anniversary of the effective date. You must also submit purchase orders for the extension and any additional qualified desktops added prior to the third anniversary True Up (or, if there is no increase in the number of qualified desktops, a True-Up Report) to your reseller within 15 days following such anniversary. If you exercise this option, it will also automatically extend the term of any Upgrade Advantage subscriptions ordered under this agreement, and will obligate you to pay for an additional year of coverage with respect to each such subscription. The per desktop "reference price" for the enterprise license for that one year extension will be the Annual Desktop Reference Price per part VI of the Enterprise Sign-Up Form multiplied by the current total number of qualified desktops. As is true of the reference price for the entire enterprise license, the reference price for its one-year extension is intended only as a reference point in negotiating the actual price with your reseller. The reference price does not include any applicable taxes, duties or tariffs.

General Discussion:

The agreement can be terminated only for cause. Most breaches require notice and an opportunity to cure before they constitute cause for termination. Some breaches we feel are impossible to cure: e.g., once our software has been decompiled, it has been decompiled - there is no turning back, and there is no cure. The second sentence addresses those defaults we feel cannot be cured, and it tries to do so in a very selective fashion. For those non-curable breaches we have retained the right to terminate **the agreement immediately**.

40. "This agreement will remain in effect for 36 full calendar months following the effective date, unless terminated by either party for cause."

Handling Customer Objections

- *Want to be able to terminate the agreement early.*
See Section C, page 9.
- *Want to have a longer term.*

This is partly a business decision and partly a legal one. The business reason for which we should be very cautious about agreeing to a longer term is that the longer agreement will need to be supported further into the future, and that may not be desirable. A Select 2.x agreement that was signed in May of 1995 with a 5 year term will need to be supported through May of 2000, along with some 3.0 agreements, some 4.0 agreements, and possibly even later versions of the program. There are also legal reasons why Microsoft would be putting itself at risk by agreeing to a longer term. **DO NOT AGREE TO A LONGER TERM WITHOUT FIRST DISCUSSING THE MATTER WITH YOUR BUSINESS DESK CONTACT.** [Yellow for a 2 year instead of 1 year extension]

- *Want to have a shorter term.*

See Section C, page 10.

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(North American Version)

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Section D

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14. **Term and Termination.** This agreement will remain in effect for 36 full calendar months following the effective date, unless terminated by either party for cause.⁴⁰ Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure.⁴¹ If you fail to submit your orders, or to pay any amount owed for your orders, we can terminate this agreement.

Upon expiration or termination, you must promptly order licenses for all copies of products you have run for which you have not yet submitted orders. Upon termination, any deferred Upgrade Advantage subscription fees become immediately due and payable.⁴²

You may elect to extend the term of this agreement for an additional 12 months.⁴³ To do so, you must notify us in writing 60 days prior to the third anniversary of the effective date. You must also submit purchase orders for the extension and any additional qualified desktops added prior to the third anniversary True Up (or, if there is no increase in the number of qualified desktops, a True-Up Report) to your reseller within 15 days following such anniversary. If you exercise this option, it will also automatically extend the term of any Upgrade Advantage subscriptions ordered under this agreement, and will obligate you to pay for an additional year of coverage with respect to each such subscription. The per desktop "reference price" for the enterprise license for that one year extension will be the Annual Desktop Reference Price per part VI of the Enterprise Sign-Up Form multiplied by the current total number of qualified desktops. As is true of the reference price for the enterprise license, the reference price for its one-year extension is intended only as a reference point in negotiating the actual price with your reseller. The reference price does not include any applicable taxes, duties or tariffs.

refraining from doing things with the software they know in advance they are not supposed to do, their only real obligation is to order licenses for the copies they have made. Allowing a longer cure period means that Microsoft may be forced to put up with unacceptable performance for a longer period.

Pre-Approved Alternative

- *Non-curable breaches.*

Term and Termination. This agreement will remain in effect for 36 full calendar months following the effective date, unless terminated by either party for cause. Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure. For purposes of the preceding sentence, your breach will be deemed incurable if it consists of you or your affiliate (i) obtaining licenses for the benefit of some other person or entity; (ii) renting, lending or leasing the software; (iii) reverse engineering, decompiling or disassembling the software; (iv) exporting the software

41. "Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure."

Handling Customer Objections

- *A customer may ask that you spell out which breaches are, by their nature, not curable.*

In earlier versions of the Enterprise agreement, we provided detail as to the kinds of breach that would give rise to termination on less than 30 days notice. We found ourselves constantly negotiating the details of that provision. In this version, we opted for a vague, but simple and universally sympathetic, standard. You may, however, use the GREEN pre-approved alternative below.

- *The customer may want a longer cure period.*

Given the obligations that a customer has under the Enterprise or Select agreement, what might they default on that could not be cured within 30 days? Aside from

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in violation of U.S. export laws and regulations; or (v) not marking copies with the "Restricted Rights Notice" or "Restricted Rights Legend" as required. If you fail to submit your orders, or to pay any amount owed for your orders, we can terminate this agreement.

This alternative is GREEN.

- *Longer cure period.*

None



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14. **Term and Termination.** This agreement will remain in effect for 36 full calendar months following the effective date, unless terminated by either party for cause.⁴⁰ Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure.⁴¹ If you fail to submit your orders, or to pay any amount owed for your orders, we can terminate this agreement.

Upon expiration or termination, you must promptly order licenses for all copies of products you have run for which you have not yet submitted orders. Upon termination, any deferred Upgrade Advantage subscription fees become immediately due and payable.⁴²

You may elect to extend the term of this agreement for an additional 12 months.⁴³ To do so, you must notify us in writing 60 days prior to the third anniversary of the effective date. You must also submit purchase orders for the extension and any additional qualified desktops added prior to the third anniversary True Up (or, if there is no increase in the number of qualified desktops, a True-Up Report) to your reseller within 15 days following such anniversary. If you exercise this option, it will also automatically extend the term of any Upgrade Advantage subscriptions ordered under this agreement, and will obligate you to pay for an additional year of coverage with respect to each such subscription. The per desktop "reference price" for the enterprise license for that one year extension will be the Annual Desktop Reference Price per part VI of the Enterprise Sign-Up Form multiplied by the current total number of qualified desktops. As is true of the reference price for the entire enterprise license, the reference price for its one-year extension is intended only as a reference point in negotiating the actual price with your reseller. The reference price does not include any applicable taxes, duties or tariffs.

42. *"Upon termination, any deferred Upgrade Advantage subscription fees become immediately due and payable."*

Handling Customer Objections

The customer may feel that if termination is the result of Microsoft's default, they shouldn't be liable for Upgrade Advantage fees.

In the context of an Enterprise agreement, deferred Upgrade Advantage fees are not likely to be a frequent issue. Customers do want assurances that they will not lose their investment in the EA if the customer should terminate the EA due to default by Microsoft.

In the event the agreement is terminated due to default by Microsoft, the customer would have to be given relief on both points. (see section 4 for EA fees).

Pre-Approved Alternative

None, please discuss with your Business Desk contact.

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Annotated EA - Terms & Conditions

14. **Term and Termination.** This agreement will remain in effect for 36 full calendar months following the effective date, unless terminated by either party for cause.⁴⁰ Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure.⁴¹ If you fail to submit your orders, or to pay any amount owed for your orders, we can terminate this agreement.

Upon expiration or termination, you must promptly order licenses for all copies of products you have run for which you have not yet submitted orders. Upon termination, any deferred Upgrade Advantage subscription fees become immediately due and payable.⁴²

You may elect to extend the term of this agreement for an additional 12 months.⁴³ To do so, you must notify us in writing 60 days prior to the third anniversary of the effective date. You must also submit purchase orders for the extension and any additional qualified desktops added prior to the third anniversary True Up (or, if there is no increase in the number of qualified desktops, a True-Up Report) to your reseller within 15 days following such anniversary. If you exercise this option, it will also automatically extend the term of any Upgrade Advantage subscriptions ordered under this agreement, and will obligate you to pay for an additional year of coverage with respect to each such subscription. The per desktop "reference price" for the enterprise license for that one year extension will be the Annual Desktop Reference-Price per-part VI of the Enterprise-Sign-Up Form multiplied by the current total number of qualified desktops. As is true of the reference price for the entire enterprise license, the reference price for its one-year extension is intended only as a reference point in negotiating the actual price with your reseller. The reference price does not include any applicable taxes, duties or tariffs.

43. **"You may elect to extend the term of this agreement for an additional 12 months."**

Handling Customer Objections

The customer may want a 2-year extension option rather than the standard 1-year option.

By granting this exception, Microsoft bears the price protection risk for an additional year. That is, if the price has gone up since the start of the EA, Microsoft may not be able to realize that higher price with this customer until after five years. Emphasize that by allowing the fourth year option, Microsoft is already sharing some of the risk of this arrangement by providing price protection for a long period of time. ***If they persist, however, two RED pre-approved alternatives are provided below. Please discuss with your Business Desk representative whether two one-year extensions or a single two-year extension is appropriate for your customer's situation.***

Pre-Approved Alternative

Two, one-year extensions:

You may elect to extend the term of this agreement for up to two additional 12 month periods. To do so, you must notify us in writing 60 days prior to the third and fourth anniversaries of the effective date. You must also submit a purchase order for each extended 12 month period and any additional qualified desktops added prior to the third or fourth anniversary True Ups (or, if there is no increase in the number of qualified desktops, a True-Up Report) to your reseller within 15 days following each such anniversary. If you exercise this option, it will also automatically extend the term of any Upgrade Advantage subscriptions ordered under this agreement, and will obligate you to pay for an additional 12 months of coverage per extension with respect to each such subscription. The per desktop per year "reference price" for the enterprise license for the extension will be the Annual Desktop Reference Price per part VI of the Enterprise Sign-Up Form multiplied by the current total number of qualified desktops. As is true of the reference price for the entire enterprise license, the reference price for the extension is intended only as a reference point in negotiating the actual price with your reseller. The reference price does not include any applicable taxes, duties or tariffs.

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single two-year extension:

You may elect to extend the term of this agreement for an additional 24 months. To do so, you must notify us in writing 60 days prior to the third anniversary of the effective date. You must also submit a purchase order for the extension and any additional qualified desktops added prior to the third anniversary True Up (or, if there is no increase in the number of qualified desktops, a True-Up Report) to your reseller within 15 days following such anniversary. If you exercise this option, it will also automatically extend the term of any Upgrade Advantage subscriptions ordered under this agreement, and will obligate you to pay for an additional two years of coverage with respect to each such subscription. The per desktop, per year "reference price" for the enterprise license for the extension will be the Annual Desktop Reference Price per part VI of the Enterprise Sign-Up Form multiplied by the current total number of qualified desktops. As is true of the reference price for the entire Enterprise license, the reference price for the extension is intended only as a reference point in negotiating the actual price with your reseller. The reference price does not include any applicable taxes, duties or tariffs.

These alternatives are RED.

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Annotated EA - Terms & Conditions

15. Miscellaneous.

a. Entire agreement. The documents identified on the cover page constitute our entire agreement concerning the subject matter hereof, and supercede any other prior and contemporaneous communications.⁴⁴ The terms of this agreement control over any provisions in your purchase order or any general terms and conditions maintained by us or you. To the extent there is any inconsistency between the terms contained in this agreement and the terms contained in the Product List or the use terms, the terms of this agreement shall control. This agreement (except the use terms and the Product List) can be changed only by an amendment signed by both parties.

General Discussion.

Our objective is to avoid a customer's claim that something outside of the agreement was promised to them, by a LAR, an account manager or anyone else, or inserted into the agreement by the customer's purchase order. Anything that is intended to form a part of the agreement should be built into the written amendment, if there is one.

44. "The documents identified on the cover page constitute our entire agreement concerning the subject matter hereof, and supercede any other prior and contemporaneous communications."

NOTE: All of the documents identified on the cover page - including the current Use Terms (Product Use Rights) and the current Product List must be given to the customer BEFORE the customer signs the Enterprise Agreement. This is the task of the Account Manager.

Handling Customer Objections

If there are amendments, a customer may ask that we spell out that the amendments are part of the "entire agreement."

Because any amendment would clearly spell out that it is incorporated as part of the "agreement," we feel that it is already included, without any modification of this language.

Pre-Approved Alternative

None

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15. Miscellaneous.

b. Notices. All notices, authorizations, and requests in connection with this agreement shall be sent by post, express courier, facsimile, or email, in each case with confirmation of delivery, to the addresses and numbers shown on the Address Information Form. Notices shall be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

c. Assignment. You may not assign or transfer this agreement or your rights or obligations under it, whether by contract or by operation of law, without our prior written consent.⁴⁵ We may transfer our rights and obligations hereunder without your consent, but only to one of our affiliates.⁴⁶ Any prohibited assignment is void.

relationships, or with whom we've had bad experiences in the past; companies that we know are (or soon will be) bankrupt or that do not have sufficient resources to stand behind their promise to pay for licenses received; known (or suspected) software pirates; companies that appropriate governmental agencies have told us we are not supposed to do business with because they have violated US export laws/regulations; etc. We do not want a Select/Enterprise customer to be able, by means of assignment of its agreement, to force us to extend a volume licensing relationship to a business we would not have accepted as a volume licensing customer in the first place.

- *The customer may ask that we agree not to withhold our approval without a bona fide reason.*

This change is acceptable. **See the GREEN pre-approved alternative below.**

Pre-Approved Alternative

Assignment. You may not assign or transfer this agreement or your rights or obligations under it, whether by contract or by operation of law, without our prior written consent. *We will not unreasonably withhold our consent.* We may transfer our rights and obligations hereunder without your consent, but only to one of our affiliates. Any prohibited assignment is void.

This alternative is GREEN.

45. "You may not assign or transfer this agreement or your rights or obligations under it, whether by contract or by operation of law, without our prior written consent."

Handling Customer Objections

- *The customer may ask for the right to assign to anyone they choose, or at least to their affiliates.*

There are some entities with whom we would not chose to enter into Enterprise or Select arrangements: companies that owe us large amounts of money from other relationships, or with whom we know are (or soon will be) bankrupt or that do not have sufficient resources to stand behind their promise to pay for licenses received; known (or suspected) software pirates; companies that appropriate governmental agencies have told us we are not supposed to do business with because they have violated US export laws/regulations; etc. We do not want a Select/Enterprise customer to be able, by means of assignment of its agreement, to force us to extend a volume licensing relationship to a business we would not have accepted as a volume licensing customer in the first place.

- *The customer may ask that we agree not to withhold our approval without a bona fide reason.*

This change is acceptable. **See the GREEN pre-approved alternative below.**

Pre-Approved Alternative

Assignment. You may not assign or transfer this agreement or your rights or obligations under it, whether by contract or by operation of law, without our prior written consent. *We will not unreasonably withhold our consent.* We may transfer our rights and obligations hereunder without your consent, but only to one of our affiliates. Any prohibited assignment is void.

This alternative is GREEN.

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15. Miscellaneous.

b. Notices. All notices, authorizations, and requests in connection with this agreement shall be sent by post, express courier, facsimile, or email, in each case with confirmation of delivery, to the addresses and numbers shown on the Address Information Form. Notices shall be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

c. Assignment. You may not assign or transfer this agreement or your rights or obligations under it, whether by contract or by operation of law, without our prior written consent.⁴⁵ We may transfer our rights and obligations hereunder without your consent, but only to one of our affiliates.⁴⁶ Any prohibited assignment is void.

46. "We may transfer our rights and obligations hereunder without your consent, but only to one of our affiliates."

Handling Customer Objections

A customer may ask why these restrictions are not the same for both parties, so that they can assign to their affiliates.

We consistently reject this request for the reason described: we do not want an Enterprise or Select customer to be able, by means of assignment of their customer we would not have accepted as an Enterprise or Select customer to assign is an affiliate, doesn't mean that it is an entity we would have entered into an agreement with in the first place: it might have few net assets, be a pinate, etc. What we might offer to do is limit our right to withhold approval to cases where we have bona fide reasons for doing so. The problem with that approach is that it imposes the burden of having to articulate our reason for withholding consent. On a very practical level, the customer should understand that it is in Microsoft's business interest not to unreasonably refuse to do business with a new customer: our business objective is to license more software (not less), and we have chosen Enterprise and Select as our models for doing business with large volume customers. On the other side of the argument, we need to retain the flexibility to restructure/reorganize our volume licensing business without having to seek permission from large numbers of customers. Individual agreements will not be assigned but the whole of the Select/Enterprise agreements and business may in the future be transferred from one Microsoft subsidiary to another, as was done with the transfer of volume licensing from Microsoft Corporation to MSLI, LLC as part of a corporate restructuring. Microsoft cannot be in the position of having to obtain permission from each customer in the event of such change. Although the notion of a mirror-image limitation on assignment may seem reasonable to the customer, the fact is that the customer and Microsoft have different duties/obligations and exposures to risk that argue for having different abilities to assign.

Pre-Approved Alternative

None

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15. Miscellaneous.

d. **Applicable law.** This agreement is subject to the laws of the State of Washington, U.S.A. and the federal laws of the United States.⁴⁷

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

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

g. **Large Account Resellers.** Resellers are independent contractors who act in their own name and for their own account; and have no authority to bind or impose any obligation or liability whatsoever upon us.

These agreements were written at Microsoft's headquarters by Microsoft's lawyers with a focus on Washington law: we are relatively comfortable that they operate as they are intended to operate under that law. We could seek advice from local counsel in every state and every country where we offer Select/Enterprise to see if the agreements are interpreted and enforceable under local law the same as they would be under Washington law, but that would be both expensive and time consuming. We prefer to avoid that burden by standing firm, whenever possible, on governing law. You should always push back hard on this point. There may be times where it is not possible to stick to Washington's as the governing law. In those cases, it is preferable to agree to the laws of the state of New York [first choice] or Illinois [second choice], or, for Canadian agreements, Ontario. We should never lose a deal over governing law. (You should be very skeptical of a customer's assertion that governing law is a drop-dead issue from their perspective, as well.)

- A customer may ask for language that states which laws and courts will have jurisdiction over a dispute about the agreement ("venue").

If the customer insists on a stated venue in a North American deal, offer the GREEN pre-approved alternative below.

47. "This agreement is subject to the laws of the State of Washington, U.S.A. and the federal laws of the United States."

Handling Customer Objections

- A customer will frequently ask for its state's/jurisdiction's law to govern.

Virtually every customer will ask that governing law be switched to the law of the jurisdiction in which they are headquartered. They are afraid of hidden traps in Washington law just as we are afraid of hidden traps in the laws of other jurisdictions. We have a legitimate interest in wanting identical provisions in identical agreements interpreted identically in all cases. Our best chance of achieving that is if the terms are consistently interpreted under the same governing law: Washington's.

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Pre-Approved Alternative

Applicable law. This agreement is subject to the laws of the State of [Washington,] U.S.A. and the federal laws of the United States. *Any lawsuit to interpret or enforce the rights and obligations of the parties hereunder, if brought by you, shall be brought in a court of competent jurisdiction situated in King County, Washington, and if brought by us, shall be brought in a court of competent jurisdiction situated in [Fill in county and state of customer's main office].*

This alternative is GREEN.



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15. Miscellaneous.
- d. Applicable law. This agreement is subject to the laws of the State of Washington, U.S.A. and the federal laws of the United States.⁴⁷
- e. Survival. Licenses identified in license confirmations and provisions of this agreement regarding warranties, limitations of liability, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement.
- f. Confidentiality. The terms and conditions of this agreement are confidential. Neither you nor we will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than your or our affiliates or agents, or to your designated or prospective resellers who: (a) have a need to know such information in order to assist in carrying out this agreement; and (b) have been instructed by you or us that all such information is to be handled in strict confidence.⁴⁸
- g. Large Account Resellers. Resellers are independent contractors who act in their own name and for their own account; and have no authority to bind or impose any obligation or liability whatsoever upon us.

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

NOTE: The terms of the standard Enterprise agreement are of course shown to a great number of customers as well as industry analysts. These are not held confidential on the part of Microsoft. What is intended here is that the specific commercial terms under which the agreement is offered and the information about the specific customer which is included in the agreement must be held confidential by both Microsoft and the customer.

Section E

Annotated EA - Forms

Microsoft Confidential

Section E

Annotated EA - Forms

Customer Must Complete the Following
Customer Purchase Order Number

For Microsoft Internal Use Purposes

Agreement Number
Enrollment Number

MICROSOFT ENTERPRISE SELECT AGREEMENT

This MICROSOFT ENTERPRISE SELECT AGREEMENT is entered into between the following companies as of the effective date identified under Microsoft's signature below.

Company Address:

Contracting Microsoft Affiliate Address:

Telephone:

Telephone:

Fax:

Fax:

Email:

Email:

For the Attention of:

For the Attention of:

This agreement consists of (1) this cover page, (2) Address Information Form, (3) Affiliate Participation Form, (4) Enterprise Sign-Up Form (5) Reseller Information Form, (6) Select Sign-Up Form, the attached terms and conditions and, (7) the Product Lists and the use terms in effect during this agreement. By signing below, you represent that the information you provide on each of the attached forms is accurate.

Name of Company (Entity Name):

Name of contracting Microsoft affiliate:

By: (signature)

By: (signature)

Name: (printed)

Name: (printed)

Title: (printed)

Title: (printed)

Date: (printed)

Date: (printed)

The customer MUST provide a purchase order number with the agreement or it will not be executed by Microsoft. In North America, the agreements are processed and signed by MSLI, LLC.

Microsoft is responsible for filling in the agreement and enrollment numbers on this page.

This is where the customer will fill in the name of the company signing the agreement. It also details what documents make up the agreement and contains the signature block for Microsoft and the customer.

Note: The following documents make up the entire agreement between Microsoft and the customer:

- the cover page,
- the Address Information Form,
- the Affiliate Participation Form,
- the Enterprise Sign-Up Form
- the Reseller Information Form,
- the Select Sign-Up Form,
- the terms and conditions
- the Product Lists and use terms in effect during the agreement

Section E

Annotated EA - Forms

Address Information Form

Any notices must be addressed to the contact and locations outlined below. We will notify you in writing if our address information changes. You must notify us in writing if your address changes.

Notices Information

Customer Information	Microsoft Information
Company Name	Name and address of contracting Microsoft affiliate
Street Address and/or post office box	
City and State / Province	
Country and Postal Code	
Contact Name	
Phone Number	
Fax Number	
Internet Address	
	<i>All NOTICES should have Copy To:</i> (insert appropriate LCA address)

Shipping Information

License Confirmations and Select CD-ROM's will be shipped to the following address. If CD-ROM ship address differs from the License Confirmation ship address, please complete the Welcome KIV/CD-ROM shipment address section on the following page.

License Confirmation Information	Microsoft Contact Information
Customer Name (if different than Notices contact)	Microsoft Account Manager Name
Street Address	Microsoft Subsidiary Location
City and State / Province	Microsoft Contact Email Address (if applicable)
Country and Postal Code	
Contact Name	
Phone Number	
Fax Number	
Internet Address	
Language (if different from this agreement)	

The first block of information should contain the customer contact information. This contact should be the named contact who is going to manage all communications internal to the customer regarding the agreement.

In North America, the contracting Microsoft affiliate is MSLI, LLC.

The second block of information should contain additional customer contact information. This contact should be the named contact who will be receiving and managing the License Confirmations which will be sent for all Select ad hoc product purchases under the agreement. This information must only be completed if the contact name is different than the contact name in the section above.

Note: Any requests for changes to contact information once the agreement has been executed can be sent to the 'sequest' alias for processing.

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Microsoft will automatically ship ONE SELECT CD-ROM subscription with a Welcome Kit for each pool and language designated in the table below. Please mark each box with an "X" for the language(s) you wish to have shipped for each of the desktop products and for the pool(s) you have chosen on the Select Sign Up Form. If you would like to receive *additional* shipments of CD-ROM subscriptions you may order them through your Large Account Reseller for a fee.

Language	Application Pool	System Pool	Server Pool
Arabic			
Basque			
Brazilian			
Catalan			
Chinese-Simplified			
Chinese-Traditional			
Czech			
Danish			
Dutch			
East European			
English			
Finnish			
French			
French Canadian			
German			
Greek			
Hebrew			
Hungarian			
International English			
Italian			
Japanese			
Korean			
Norwegian			
Polish			
Portuguese			
Russian			
Spanish			
Swedish			
Thai			
Turkish			

Welcome Kit / CD-ROM Shipment Contact (if different from License Confirmation contact)

Customer Name	Contact Name
Street Address	Phone Number
City and State / Province	Fax Number
Country and Postal Code	Internet Address

In the first section of this form, the customer should choose the languages they would like to receive the CD-ROM kits for each product pool. This form was changed from the Select/Enterprise agreement 4.0 versions of the form to allow changes to occur in the way we deliver the CD kits. These changes are being made to increase customer satisfaction and reduce the number of CDs sent to each customer. Customer feedback has indicated that we are sending too many CDs that they don't need or use.

In the second section of the form, the customer should fill in contact information (if different from the License Confirmation contact) identifying the person who will be receiving and managing the CD process internally.

Enterprise Sign Up Form

I. General Information

Agreement Number (to be completed by MS)	
Enrollment Number (to be completed by MS)	
Customer Name	

II. License Table

(Please complete the following information based on your existing license information in the License Table below).

1. You represent that the number of qualified desktops in your enterprise is, or will be increased to this number, during the agreement:	10,000	10,000
--	--------	--------

Office Family Information:

2. Enter the total number of existing Office licenses (Windows platform)	5,000	3,000
3. Enter the total number of existing Office Professional licenses (Windows platform)	2,000	8,000
4. Add Lines 2 & 3. This is the total number of existing Office Family licenses owned by you.	7,000	11,000
5. Subtract Line 4 from Line 1. This number will be added to the total number of additional desktop licenses ordered during the agreement. This is the total number of FULL Office Pro licenses that will be granted to you at the end of the enterprise agreement.	3,000	0
6. Enter the amount from Line 4. This is the total number of Office Pro <i>UPGRADE</i> licenses which you will receive at the end of the enterprise agreement.	7,000	10,000

Operating System Information

7. Enter the total number of existing Windows NT Workstation licenses	1,500	1,000
8. Enter the total number of existing Windows 3.x/9x licenses	8,000	9,000
9. Enter the total number of existing IBM OS/2 licenses	500	0
10. Add the sum of Lines 7, 8, and 9 to total number of additional desktop licenses ordered during the agreement. This is the total number of Windows NT Workstation <i>UPGRADE</i> licenses you will receive at the end of the enterprise agreement. Note: The sum of Lines 7, 8, and 9 must equal the quantity from Line 1.	10,000	10,000

Microsoft will insert the agreement number and enrollment number on this form.

Section II of this form should contain the total number of desktops that the customer currently has in their enterprise. They can name a greater number of desktops than those currently in the enterprise - to accommodate planned growth, etc.- as long as they understand that this is the number of desktops that they will be purchasing licenses for under the agreement. The customer should provide their best estimate of install base numbers for each of these items in order to ensure that they are issued the appropriate number of new licenses and upgrades at the end of the agreement.

We have provided two examples of how to complete this form for your reference to clarify questions we have received on how to complete this form. If you need additional information or have any further questions, please see your Business Desk contact for assistance.

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BackOffice Client Access License (CAL) Information

11. Enter the total number of existing BackOffice CALs	3,000	2,000
12. Enter the total number of existing SQL Servers CALs	1,000	1,000
13. Enter the total number of existing Windows NT Server CALs	5,000	3,000
14. Enter the total number of existing Exchange CALs	2,000	1,000
15. Enter the total number of existing SMS CALs	0	0
16. Enter the total number of existing SNA CALs	0	0
17. Add Lines 11 - 16.	11,000	7,000
18. Subtract Line 17 from Line 1. (a) If Line 17 is larger than Line 1, enter zero. You will receive no full licenses for the BackOffice Client Access License at the end of the enterprise agreement. (b) If Line 17 is less than Line 1, This number will be added to the total number of licenses for additional desktops ordered under this agreement for which you will receive FULL BackOffice Client Access Licenses at the end of the enterprise agreement.	0	3,000
19. If Line 18 is greater than Line 1, enter the quantity from Line 1. If not, enter the number from Line 18. This is the total number of BackOffice Client Access UPGRADE licenses which you will receive at the end of the enterprise agreement.	10,000	7,000

Please note that in each case, we never agree to give the customer a greater number of licenses (combined total of NEW and UPGRADE licenses) than the TOTAL number of desktops identified in section I.

III. Definition of the Enterprise

Your enterprise must consist of entire legal entities, not partial entities such as departments, divisions or business units. Each affiliate must be entirely "in" or entirely "out".¹ Please check the applicable box below.

(a) You and all affiliates (as defined by law - e.g., corporation, partnership or other legal entity)

(b) You and all affiliates excluding the following:

(NOTE: If more than 6 affiliates are being excluded, attach list of names on separate piece of paper.)

1. "Your enterprise must consist of entire legal entities, not partial entities such as departments, divisions or business units. Each affiliate must be entirely "in" or entirely "out"."

Handling Customer Objections

Your customer may not wish to include the entire corporate family. Parts of the group may not be ready or may not have already made the decision to move to the complete platform of Microsoft technology. Likewise, some department or business units may not be able to afford to honor the agreed-upon terms. While we wish to be flexible in allowing customers to define their "enterprise," we do not wish to have customers fragment their enterprise. This was a difficulty for all parties in earlier versions of Select, and so as a general rule, the "enterprise" will need to consist of whole legal entities, not fragments of entities. Under this general rule, the customer can opt to include in or exclude from the "enterprise" any affiliate(s), but each affiliate must either be entirely in, or entirely out. In special cases, where a division of a company stands as a separately recognizable operating division of a customer or its affiliate, (e.g., the ABC Division is a separate and separately recognizable division of Alphabet Company), the Business Desk will have the authority to create an "enterprise" that splits off the division from the remainder of the entity.

Note: "all affiliates" means ALL affiliates of the corporation, and each affiliate must be listed on the Affiliate Participation Form.

Note: We ask the customer to list the affiliates that ARE included in the enterprise on the Affiliate Participation Form. Here we ask the customer to list the affiliates that ARE NOT included in the enterprise (if any). It may seem strange to ask the customer to present the same information in two different ways, but there are benefits to us (in tracking compliance/piracy) to have this information in both formats. For example, if we had an agreement with the ABC company, and their enterprise included the DEF, GHI, JKL, and MNO affiliates, but didn't include their PQR affiliate, then the Affiliate Participation Form would list the DEF, GHI, JKL and MNO affiliates - but not the PQR affiliate. The PQR affiliate would be listed here instead.

Note, this objection may also come up in the context of the opening paragraph of Terms & Conditions (Footnote #3).

Pre-Approved Alternative

None

Section E

Annotated EA - Forms

IV. Designated Languages

You will use the desktop products in the language category specified below. Please mark one box below with an "X" for the language category of your choice.

"Listed languages" means any of the following localized language versions: Chinese Simplified, Chinese Traditional, Czech, Dutch, English, Greek, Hebrew, Hungarian, Korean, French Canadian, Japanese, Spanish, Polish, Russian, Turkish and Thai.

"All languages" means (i) all of the languages in the listed languages category above, and (ii) any of the restricted languages below.

"Restricted languages" means Danish, Finnish, French, German, Italian, Norwegian, Portuguese, Swedish, Arabic and, if the agreement is signed in Europe, English.

<input type="checkbox"/>	Listed Languages
<input type="checkbox"/>	All Languages

Note: By electing the listed language category you may use a maximum of 10% of the copies of any such desktop product in the restricted languages.²

2. "By electing the listed language category you may use a maximum of 10% of the copies of any such desktop product in the restricted languages."

Handling Customer Objections

Your customer may want to use more than 10% of the software in the restricted languages, but it may not want to pay the all languages price. They may ask for a "blended" price for the language versions they intend to use.

See Section C, page 6.

The languages listed in the 'listed languages' category are those languages that are priced the same as US English. The languages listed in the "restricted languages" category are those languages priced higher than US English. Because the English language is priced higher in Europe due to market issues, when the customer purchases the English language in Europe, it is treated as a restricted language.

V. Language Allocation

You estimate, in good faith, that you will use the desktop products in the languages in the percentages specified below:

Language Versions	Percentages
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

VI. Enterprise license reference prices
(To be completed by Microsoft or reseller)

Enterprise license reference price ¹	Annual desktop reference price
_____ Dollars	_____ Dollars
\$ _____ .00	\$ _____ .00

3. Regarding pricing, a customer may want to know:

o Are they getting a great price?

See Section C, pages 2-5.

o Are they getting a price that matches the best price that Microsoft gives to similar customers ("most favored nation" clause)

See Section C, page 22.

o Because of their frequent refresh rate and the fact that they're buying PCs with OEM versions of the operating system already pre-loaded, aren't they paying for their operating systems twice?

See Section C, page 14.

o Can they get a credit if their current Select agreement hasn't yet expired and they'll have overlapping upgrades Advantage coverage?

See Section C, page 8.

Note: The customer should use their best estimate of language allocation among the languages listed in the categories in section IV to complete this section of the form. These allocations determine the language quantities for the final number of license confirmations that will be issued to the customer at the end of the agreement.

Note:

The Enterprise License Reference Price entered in this section should be equal to the TOTAL 3 YEAR ERP for the customers' Enterprise Agreement.

The Annual Desktop Reference Price entered in this section should be equal to the ANNUAL ERP for the DESKTOP PRODUCTS purchased under the Enterprise Agreement.

VII. Additional qualified desktop reference prices
(To be completed by Microsoft or reseller)

First anniversary true up price	Second anniversary true up price	Subsequent anniversary true up price
Dollar	Dollars	Dollars
\$.00	\$.00	\$.00

The true-up prices in this table should reflect the ERP price for each year's true up. The 'subsequent anniversary true-up price' is the true-up price for years 3 and 4 (if the agreement is extended to a 4th year).

4. Regarding True-up pricing, a customer may want to know"

- Will Microsoft change the True-up formulas?

See Section C, page 15.

Note, this objection may also come up in the context of the Terms & Conditions, section 3 (Footnote #13b).

Reseller Information Form

You must choose a Large Account Reseller authorized in your area.¹ If, at any time during the term of the Agreement, you wish to terminate the relationship with your designated Large Account Reseller, or if we discontinue the reseller's status as Large Account Reseller, you must choose a replacement and notify us and the old Large Account Reseller in writing of the new Large Account Reseller you have designated. To avoid purchasing delays such a change might entail, you should cause any change of reseller to occur prior to an anniversary date of this agreement by providing us with 30 days written notice.

The following sections should be completed by the Large Account Reseller.

I. General information:

Large Account Reseller Headquarter Information	Large Account Distributor Information (if applicable)
Reseller Name	Distributor Name
Headquarters Street Address and/or post office box	Headquarters Street Address and/or post office box
City and State / Province	City and State / Province
Country and Postal Code	Country and Postal Code
Contact Name	Contact Name
Phone Number	Phone Number
Fax Number	Fax Number
Internet Address	Internet Address

1. "You must choose a Large Account Reseller authorized in your area."

- Some customers may request to buy directly from Microsoft on such a substantial purchase agreement instead of going through a LAR. In addition, if a LAR has not clearly demonstrated their value or has performed poorly in the past, the customer may not see any value to having the LAR involved. See Section C, page 13.

Note, this objection may also come up in the context of the Terms & Conditions, section 1 (Footnote #7) No alternative is offered. This issue is BLACK.

- Some customers may request to use multiple LARs instead of just one. See Section C, page 12.

Note, this objection may also come up in the context of the Terms & Conditions, section 1 (Footnote #7) No alternative is offered. issue is BLACK.

II. Billing information for enterprise license coverage:
 (To be filled in for customers with 500-4,999 Desktops ONLY. A Channel Price Sheet will be supplied by Microsoft for customers with 5,000 and greater desktops.)

- a.) Direct partner purchase order number:
- b.) Part number and price information for enterprise license coverage:
 Insert the Microsoft part number and price information to be billed for the TOTAL number of desktops entered in Part II, line 1 of the Enterprise Sign Up Form and by language selected in Part IV of the Enterprise Sign Up Form.

(NOTE: The part number and price level information required below is provided to the Direct Partner on the Select 4 Price List.)

Microsoft Part Number	Product Language (must match Part IV of the Enterprise Sign Up Form)	Price Level	Usage Country	Number of Desktops
Total (must match total number of desktops in Part II, line 1 of the Enterprise Sign Up Form)				

Note: Billing currency is the currency in which the reference price is expressed.
 The above price level will be extended to reseller for the term of the Enterprise Select Agreement between the licensing Microsoft affiliate and the customer. The enterprise licenses will be billed in annual installments. The first installment will be invoiced upon submission of the order, the remaining installments will be invoiced at each anniversary of the effective date of the agreement. Signature acknowledges that the above price level and usage country information has been reviewed and agreed to by reseller, subject to the terms and conditions of its Large Account Distributor information is correct.

Direct Partner Signature

Signature

Name (Please Print)

Title (Please Print)

Date

This form should be completed by the LAR for all 500-4,999 desktop customers, for which Microsoft is NOT providing a separate Channel Price Sheet (which would reflect a negotiated price instead of a standard price).

For Microsoft Internal Use Purposes

Select Enrollment Number

MICROSOFT SELECT SIGN UP FORM

The information you provided on the Address Information Form, Reseller Information Form and Affiliate Participation Form apply to this sign up form as well.

I. Select Price Level.

Your price level for licenses for products other than the desktop products is determined according to the following table:

Number of Desktops (per Part II, Line 1 of Enterprise Sign Up Form)	Select Price Level
500 to 999	A
1,000 to 4,999	A
5,000 to 19,999	B
20,000 to 49,999	C
Above 50,000	D

Microsoft will insert the Select Enrollment Number in this section of the form.

NOTE:

Affiliates who are NOT listed on the Affiliate Participation Form CANNOT purchase Select software products under the Enterprise Agreement.

1. Regarding price levels, your customer may request a greater discount on standard Select products than its qualified desktop count entitles it to (e.g., it may have a division that uses Macs for which it wishes to license Select products). These non-qualified desktops wouldn't ordinarily impact its volume discount.

See Section C, pages 2-5.

Note, this objection may also come up in the context of the Terms & Conditions, section 1 (Footnote #10).

No alternative is offered.

Section E

Annotated EA - Forms

II. Select Pools.

Your pool choices for licenses for products other than the desktop products and CD-ROM shipments is determined according to the following table. You will receive one Welcome Kit CD-ROM shipment that includes both desktop products and other products as indicated by your choice of pools. Please mark an "X" in the applicable box for each pool from which you want to purchase licenses.

<input type="checkbox"/>	Applications Pool	<input type="checkbox"/>	Systems Pool	<input type="checkbox"/>	Server Pool
--------------------------	-------------------	--------------------------	--------------	--------------------------	-------------

III. Estimated Retail Prices.

Published estimated retail prices for Upgrade Advantage subscription fees are based on a standard Select Master Agreement term of two (2) years. You should expect that the Upgrade Advantage subscription fees you will be charged by your reseller will be proportionately greater to reflect the longer term of this agreement.

IV. Existing/Prior Select Master Agreement(s).

Please note that your existing agreement(s) will not automatically be terminated. If you wish to terminate an existing agreement, please contact your Microsoft account manager or reseller.

If the customer would like to receive CDs for all products in each pool, they MUST check all three boxes in this section of the form.

Upgrade Advantage subscriptions are not pro-rated under the Enterprise Agreement. When a customer purchases Upgrade Advantage subscriptions during the agreement, they should expect to pay as follows:

Year 1: 3 years of UA*

Year 2: 2 years of UA*

Year 3: 2 years of UA

Year 4: 2 years of UA for new purchases added during that year.

* if extended the customer will automatically be billed for another year of UA for products covered under UA in years 1 and 2.

If a customer has an existing Select agreement that they would like to terminate, they need to notify us of this request. We do not automatically terminate existing agreements as there may be affiliates that are not part of the enterprise definition that may wish to continue to purchase under the Select agreement, or there may be existing UA payments that cannot be cancelled.

Section E

Annotated EA - Forms

ATTACHMENT A

AGREEMENT NUMBER _____
CUSTOMER NAME _____
EFFECTIVE DATE _____
Enterprise True Up Report

Initial True Up Report _____ (A)
Current total number of qualified desktops:

Total number of qualified desktops in the License Table, part II, line 1 _____ (B)

Total number of additional desktop licenses required: _____ (A-B)

Subsequent True Up Reports _____ (X)
Current total number of qualified desktops:

The largest total number of qualified desktops shown on any prior True Up Report, or the number of qualified desktops identified in the License Table, part II, line 1, whichever is greater: _____ (Y)

Total number of additional desktop licenses required: _____ (X-Y)

A True Up Report must be submitted ONLY if the number of qualified desktops have not increased as of any True Up Report date. If there are any additional desktop licenses to report, please submit a purchase order to your reseller. No credit will be provided for decreases in the number of qualified desktops.

I agree that the above is a true and accurate reporting in compliance with the above-referenced agreement.

Report completed by: _____

Name of Customer _____

Authorized signature _____

Name (please print) _____

Title _____

Date _____

Submit an original to: Your Reseller

NOTE:

True-up Reports must only be submitted IF the customer has NOT added desktops during the prior year of its agreement.

True-up Orders must be placed each year that a customer DOES add desktops during the prior year of its agreement.

Welcome to the **Microsoft** Enterprise Agreement Pricing Tool!

Version : 052799

Home Page: Instructions and General Information

Select Level Deal Value (USD)

None Below 1000 Units

Additional Discount

Complete the following steps to calculate pricing for Enterprise Agreements and to prepare the documents necessary to complete the sale:

You may click to Recall a saved Deal.

1. Identify yourself. Click here to enter information identifying the **Microsoft Account Representative** responsible for the account.

Status = Incomplete

2. Identify the Contacts. Click here to enter information identifying the **Customer**. If the customer has chosen a **Large Account Reseller**, identify them here also.

Customer: Missing Name, LAR: Missing Name

3. Enter the contract signing date. If left blank, next month will be assumed.

4. Enter the Number of Desktops.

5. Determine the Commitment Level.

Commitment Level = IV
(0%-25% Licensed on Platform)

6. Select the Sales

United States - Direct To Reseller - Corporate

US Dollar

Location and Billing Currency.

Sales

Billing

7. Here is the Price Per Desktop

Click to apply up to a 30% Discount

Click to use previous month's pricing

8. Select the Usage Countries

Click for multinational customers, to indicate countries in which the customer will use the software

United States

Primary Usage Country

Status = 1 Country Selected

9. Specify the language(s) used. Do one of the following:

a) Choose a single language:

English

or

b) Check this box for ALL LANGUAGES:

All Languages

or

c) Click on "**Blender**" to specify a limited number of languages.

Blender (Click to set or clear)

10. Identify the Services. Click here to specify which **Premier and Microsoft Consulting Services** the Customer either has today, or will be purchasing.

Status = No Services Entered

11. View the Pricing. Click here [\[link\]](#) to view a chart showing both annual pricing for the **Initial Order**, and one-time pricing for annual **True Up Orders**.

12. Print and Save the Pricing. Click here [\[link\]](#) to create the **Channel Price Sheet**, as well as **Internal and Customer Pricing Summaries**. This also **Saves your deal** in a Workbook File.

13. Create a Proposal. Click here [\[link\]](#) to link to ECUWeb and download **proposal templates** and other **Enterprise Agreement information**. <must be connected to network directly or via Remote Access.>

14. Complete the Contract. Click here [\[link\]](#) to download the Enterprise Agreement contract templates. <must be connected to network directly or via Remote Access Services>

15. Contact the Worldwide Business Desk for assistance with **special terms, conditions, or pricing**. Click here [\[link\]](#) to [\[link\]](#) download a copy of the Engagement Summary Form. <must be connected to network directly or via Remote Access Services>

CONCESSION REQUEST + SUMMARY SHEET MICROSOFT INTERNAL - DO NOT SHOW THE LAR OR END CUSTOMER

PLEASE COMPLETE BLUE SHADED CELLS BELOW

Account Executive Name, Date updated, Account Executive, "GREEN" Empowerment owner, "YELLOW" Empowerment owner, "RED" Empowerment owner, Licensing Executive, LICENSING PRICING INFORMATION, Retail Price per PC, EA Contract value at ERP, Additional SW Products at ERP (if any), ERP of any other proposed items, TOTAL CONTRACT VALUE AT ERP, TOTAL CONTRACT VALUE REQUESTED BY YOU, TOTAL CONTRACT DISCOUNT % REQUESTED BY YOU

EMPOWERMENT APPLIES TO BREADTH & DEPTH ACCOUNTS ONLY (OVER 1000 PCs)

Note: This is the undiscounted or "starting price" price based on the customer's initial base and commitment. Note: This is the undiscounted or "starting price" price based on the customer's initial base and commitment. What? Please explain your reasoning and please ensure that you have detailed the additional products here.

Note: Please see the discount empowerment levels below for sign-off.

Note: Services require a SEPARATE contract to be signed AND the pricing SEPARATE orders. The customer will also receive separate invoices. Note: Services require a SEPARATE contract to be signed AND the pricing SEPARATE orders. The customer will also receive separate invoices.

PLEASE NOTE THAT EVERY CUSTOMER SITUATION IS UNIQUE. PLEASE DO NOT SET ANY EXPECTATIONS UNTIL YOU HAVE GAINED CLEAR PERMISSION.

Table with 11 rows for Green exceptions. Columns: Requested, Internal, Rationale. Includes sub-section 'MOUSE CLICK ON BOXES BELOW'.

Table with 11 rows for Yellow exceptions. Columns: Requested, Internal, Rationale. Includes sub-section 'MOUSE CLICK ON BOXES BELOW'.

Table with 11 rows for Red exceptions. Columns: Requested, Internal, Rationale. Includes sub-section 'MOUSE CLICK ON BOXES BELOW'.

Table with 11 rows for Other exceptions requested: Business Desk. Columns: Requested, Internal, Rationale.

THE FOLLOWING ARE EXAMPLES OF EXCEPTIONS THAT MICROSOFT WILL NOT APPROVE (BLACK EXCEPTIONS): X DIRECT DEALS - NO LAR, X AGGREGATION OF COMPANIES THAT ARE NOT OWNED BY THE MASTER, X PC'S WITHOUT AN OPERATING SYSTEM (NAMED PC'S), X UNLIMITED LIABILITY, X MOST FAVOURED NATION CLAUSE, X REDUCING THE EA TERM TO 2 YEAR, X USE MULTIPLE LANS FOR THE SAME ENROLLMENT

DIRECT DEALS - NO LAR.
AGGREGATION OF COMPANIES THAT ARE NOT OWNED BY THE MASTER.
PC'S WITHOUT AN OPERATING SYSTEM (NAKED PC'S)
UNLIMITED LIABILITY
MOST FAVOURED NATION CLAUSE
REDUCING THE EA TERM TO 2 YEAR
USE MULTIPLE LARS FOR THE SAME ENROLMENT

MS-PCA 1575104
HIGHLY CONFIDENTIAL

Select 4.0 and U.S. Open License Commercial ERP Pricing - English
Effective June 1, 2000

Product	Sale Type	FPP	MLP	Open			Select			
				A	B	C	A	B	C	D
Applications										
Office 2000	Standard	\$406	n/a	\$388	\$370	\$343	\$388	\$330	\$283	\$272
	Competitive Upgrade	248	n/a	221	224	218	223	216	206	202
	Version Upgrade	248	n/a	180	175	189	175	171	167	161
	Upgrade Advantage	n/a	n/a	226	228	226	224	224	224	224
Office Professional 2000	Standard	\$599	n/a	\$488	\$445	\$412	\$442	\$397	\$352	\$326
	Competitive Upgrade	348	n/a	320	311	302	311	298	285	274
	Version Upgrade	348	n/a	269	262	254	262	253	243	234
	Upgrade Advantage	n/a	n/a	270	270	270	266	268	268	258
Systems										
Windows 95	Standard	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Competitive Upgrade	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Version Upgrade	108	n/a	101	99	87	85	95	85	85
	Upgrade Advantage	n/a	n/a	138	138	138	130	130	130	130
Windows 98	Standard	\$208	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Competitive Upgrade	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Version Upgrade	108	n/a	87	85	83	85	85	85	85
	Upgrade Advantage	n/a	n/a	138	138	138	130	130	130	130
Windows NT Workstation 4.0	Standard	\$318	\$269	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Competitive Upgrade	n/a	n/a	238	230	216	232	213	195	181
	Version Upgrade	168	126	120	120	120	114	114	114	114
	Upgrade Advantage	n/a	n/a	180	180	180	157	157	157	157
SERVERS <i>(Unless otherwise indicated, no individual Server or Server CAL product offered in table)</i>										
BackOffice Server 4.5	Standard	n/a	n/a	\$1,885	\$1,632	\$1,719	\$1,843	\$1,655	\$1,467	\$1,358
	Competitive Upgrade	n/a	n/a	1,548	1,495	1,402	1,503	1,350	1,196	1,107
	Version Upgrade	n/a	n/a	868	844	804	840	873	809	472
	Upgrade Advantage	n/a	n/a	786	786	786	880	680	680	680
BackOffice Server 4.5 CAL	Standard	n/a	\$208.95	\$188	\$181	\$179	193	173	153	142
	Competitive Upgrade	n/a	158.45	154	147	138	147	132	117	109
	Version Upgrade	n/a	71.95	70	67	62	67	60	53	50
	Upgrade Advantage	n/a	n/a	63	63	63	79	79	79	78
Exchange Server 5.5	Standard	n/a	n/a	\$501	\$478	\$440	\$472	\$424	\$378	\$350
	Competitive Upgrade	n/a	n/a	407	389	353	424	383	329	285
	Version Upgrade	348	n/a	289	285	248	227	216	205	197
	Upgrade Advantage	n/a	n/a	219	219	219	210	210	210	210
Exchange Server 5.5 CAL	Standard	n/a	\$73.80	\$58	\$54	\$49	\$53	\$43	\$43	\$40
	Competitive Upgrade	n/a	37.80	33	31	29	30	29	28	27
	Version Upgrade	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Upgrade Advantage	n/a	n/a	23	23	23	22	22	22	22
Site Server 3.0	Standard	n/a	n/a	\$783	\$745	\$687	\$737	\$663	\$587	\$547
	Competitive Upgrade	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Version Upgrade	n/a	n/a	412	391	362	408	387	367	352
	Upgrade Advantage	n/a	n/a	583	589	589	628	528	528	528
Site Server 3.0 CAL	Standard	n/a	\$41.95	\$38	\$35	\$32	\$35	\$31	\$23	\$23
	Competitive Upgrade	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Version Upgrade	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Upgrade Advantage	n/a	n/a	53	53	53	50	50	50	50
SNA Server 4.0	Standard	n/a	n/a	\$801	\$782	\$703	\$754	\$677	\$600	\$558
	Competitive Upgrade	n/a	n/a	413	406	378	407	385	368	353
	Version Upgrade	n/a	n/a	401	381	352	377	339	300	278
	Upgrade Advantage	n/a	n/a	522	522	522	490	490	490	490
SNA Server 4.0 CAL	Standard	n/a	\$79.95	\$43	\$43	\$39	\$43	\$40	\$36	\$34
	Compet/Ver. Upgrade	n/a	29.95	23	21	20	23	20	18	17
	Upgrade Advantage	n/a	n/a	30	30	30	29	29	29	29
SQL Server 7.0	Standard	n/a	n/a	\$770	\$735	\$681	\$730	\$656	\$551	\$538
	Compet/Ver. Upgr.	n/a	n/a	385	386	340	385	328	291	270
	Upgrade Advantage	n/a	n/a	311	311	311	298	298	298	298
SQL Server 7.0 CAL	Standard	n/a	\$147.80	\$127	\$123	\$114	\$123	\$110	\$98	\$91
	Compet/Ver. Upgrade	n/a	73.80	68	63	58	63	57	50	47
	Upgrade Advantage	n/a	n/a	43	48	46	45	45	45	45
Systems Mgmt Svr 2.0	Standard	n/a	n/a	\$492	\$475	\$446	\$478	\$429	\$381	\$353
	Compet/Ver. Upgrade	n/a	n/a	249	241	226	244	219	195	181
	Upgrade Advantage	n/a	n/a	341	344	344	317	317	317	317
Systems Mgmt Svr 2.0 CAL	Standard	n/a	\$44.45	\$42	\$41	\$38	\$41	\$37	\$33	\$31
	Compet/Ver. Upgrade	n/a	25.45	21	20	19	21	19	17	16
	Upgrade Advantage	n/a	n/a	30	30	30	27	27	27	27
Windows NT Server 4.0	Standard	n/a	n/a	\$849	\$827	\$768	\$811	\$767	\$702	\$665
	Competitive Upgrade	n/a	n/a	265	258	250	283	258	236	227
	Version Upgrade	n/a	n/a	265	258	250	283	258	236	227
	Upgrade Advantage	n/a	n/a	225	225	225	214	214	214	214
Windows NT Server 4.0 CAL	Standard	n/a	\$39.95	\$31	\$30	\$28	\$31	\$28	\$25	\$24
	Competitive Upgrade	n/a	19.95	13	12	12	13	13	12	12
	Version Upgrade	n/a	19.95	13	12	12	13	13	12	12
	Upgrade Advantage	n/a	n/a	12	12	12	11	11	11	11

Note: Pricing would also apply to Select 3.0 Variable for levels A, B, and C and Variable Maintenance

Server Pricing Classification Matrix:

1 MLP price based on unit price of 20 CAL, paid up license

2 MLP price based on unit price of Exchange CAL 3 year (\$288 divided by 3)

3 MLP price based on unit price of Exchange CAL, 5 year (\$318 divided by 5)

4 Price currently available on this server (MS CAL) through MSPE (currently \$3,100 in Exchange Desktop editions and BackOffice Live Server editions)

5 MLP price based on unit price of Site Server CAL, 3 year (\$270 divided by 3)

6 MLP price based on unit price of Site Server, 30 CAL, paid up (\$3170 divided by 30)

7 MLP price based on unit price of SNA Server, 30 CAL, 5 year (\$270 divided by 5), currently, used only where CAL, 5 year (MLP) for Client/Ver. Upgrade and Adv.

8 MLP price based on unit price of SQL Server CAL 3 year (\$270)

9 MLP price based on unit price of Systems Management Server, 20 CAL, paid up (\$288 divided by 20)

10 MLP price based on unit price of Systems Management Server, 20 CAL, 3 year (\$270 divided by 3)

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Microsoft

MICROSOFT[®] SELECT

Volume-licensing program version 4.1

PROGRAM OVERVIEW

February 1999

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Microsoft **SELECT**

4.1

INTRODUCING MICROSOFT SELECT

Microsoft Select is a simple volume software licensing program designed to help reduce your total cost of software ownership while making it easier to acquire licenses for Microsoft® products on an ongoing basis.

Designed for business, government, and education customers with more than 1,000 desktops, Select 4.1 reflects recent changes to Microsoft's volume licensing program intended to simplify the program and make it easier to use. This Overview provides you with a profile of the program and how it works. If you have additional questions, please contact your Microsoft Large Account Reseller (LAR) or your Microsoft Account Manager.

Benefits of Select 4.1.

Select offers your organization a number of important benefits, including:

- **Volume pricing can save you money.** Pricing for licenses acquired under Select reflects the forecast of your *entire* organization over a two-year agreement term, even if licenses are acquired from multiple locations throughout the world.
- **Instant access to software.** You receive a complimentary Select CD-ROM set upon signing your Select agreement, containing the products available within the pool or pools you chose. Select allows you to immediately reproduce and use these Microsoft software products, so you always have access to software when and where it is needed—without having to pre-purchase and store boxes of software or standalone licenses.
- **Convenient license acquisition process.** Select 4.1 is based on a simple transaction model, making software acquisition as easy as buying any other business productivity tool.
- **Obtain software wherever you do business.** You're free to establish multiple purchasing locations—such as various departments or even subsidiaries of your corporation—each with its own purchase decisions. In addition, you can acquire and pay for Select licenses through any of more than 400 authorized Large Account Resellers in over 30 countries worldwide.

- **Investment Protection.**
Our Upgrade Advantage offer gives you the right to

upgrade your software to the current version and keep it current for the term of your Select agreement.

SELECT PROGRAM DETAILS

Select offers tiered, volume-based pricing to large organizations worldwide.

Point Values

Point values are assigned to all products. The point value for a particular product is the same for new, upgrade, and Upgrade Advantage licenses. However, point values differ between products, so your point values will not always equal the number of licenses you acquire. If a product has a point value greater than one, you will still only have the right to make one copy per license for that product.

Your two-year forecast (see Price Levels, below) is measured in terms of total points. For example, if your forecast calls for you to acquire 2,000 points, you can satisfy your agreement by acquiring 2,000 licenses with a point value of one or 1,000 licenses with a point value of two, or any combination totaling at least 2,000 points. Some of the available products and their associated point values are listed in the table below. A complete list of available products and point values is available from Microsoft or your Large Account Reseller.

Product Pools

The products are pooled into one of three groups: applications, systems, and servers. You can combine products within a specific pool to reach lower pricing levels, but acquisitions in one product pool cannot be used to count toward your volume for another pool.

For example, you can combine your points for both Project and Office for the Application Pool, but points for Windows® 98 Upgrade and Windows NT® Workstation Upgrade count separately toward your System Pool volume.

You can acquire Select Software Product licenses from any product pool that you select on your Master Agreement.

Application Pool		System Pool		Server Pool	
Product	Points	Product	Points	Product	Points
Microsoft Access	1	MS-DOS® Upgrade	1	Microsoft SNA Server for Windows NT Server	15
Microsoft Excel	1	Microsoft Windows 98 Upgrade	2	Microsoft SQL Server™ Client Access License	1
Microsoft Office Standard	2	Microsoft Plus! for Windows 98	1	Microsoft Exchange Server	15
Microsoft Office Professional	1	Microsoft Windows NT Workstation		Microsoft Windows NT Server	
Microsoft Project	1	Competitive/Product or Version Upgrade		Microsoft Windows NT Client Access License	15
Microsoft Word	1				
Microsoft Works	1				

			2			1
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Price Levels

When you enter into a Select agreement, you will forecast the number of points you expect to acquire over the two-year term of your agreement. This forecast is used to determine your price level.

There are four price levels under the Select program, each determined on a per-product-pool basis. Generally, the more points you acquire, the lower the price level.

Price Level	Microsoft Variable License (Minimum 2-year forecast in points per product pool)
A	2,000
B	8,000
C	20,000
D	50,000

Your two-year forecast is specific to the product pool. For example, suppose you're planning to acquire 5,000 Licenses for Microsoft Office and 2,250 Licenses for Microsoft Windows NT Workstation Upgrade. You would make two forecasts: one for the Application pool and one for the System pool.

Product	Product Pool	Point Value	License Forecast	Total Points	Price Level
Microsoft Office Professional	Application	2	5,000	10,000	B
Microsoft Windows NT Workstation Upgrade	System	2	2,250	4,500	A

Your Select agreement takes into account the points that will be acquired by your entire organization. The price level assigned to the product pool will apply to all licenses acquired under the Select program by your entire organization for that product pool. During the term of your agreement, your forecast is reviewed against your actual "consumption rate", or the rate at which you are actually ordering licenses, and the price level(s) attributed to your Select agreement may be raised to reflect "actual consumption" (the number of license you actually ordered). It is therefore important that the initial forecast be your best estimate of projected use.

Upgrade Advantage

There are a number of upgrade options available to you under your Select agreement, including version and competitive upgrades for some of Microsoft's most popular products.

In addition, Select 4.1 offers Upgrade Advantage, an option previously called "Maintenance", helps you maintain the full value of your software investment by keeping your software up-to-date with the latest product versions. Upgrade Advantage is designed to help you avoid budget spikes when a new version of a product is released.

Upgrade Advantage benefits include:

- **Current upgrade.** You have the right to upgrade all enrolled licenses to the most current version of a product, regardless of the version owned when the license is enrolled in Upgrade Advantage.
- **Upgrade protection.** If Microsoft releases any major or minor upgrades to any enrolled licenses during the term of your agreement, you have the right to install and use those upgrades, as well.
- **Simple payment method.** You have the option of paying up-front for the entire coverage term, or breaking your Upgrade Advantage fee into two annual, non-cancelable payments for acquisitions during the first year of your agreement.

Microsoft does not guarantee upgrades to any product during the term of an agreement. Product announcement estimates and other public or private statements are not a basis for expecting upgrades at any given date.

You can enroll an unlimited number of Microsoft product licenses in the Upgrade Advantage program at any point during your Select agreement, provided the products are part of the same product pool or pools selected on your agreement. Upgrade Advantage expires upon expiration of your Select Agreement.

Select Prices

Estimated Retail Prices for licenses for each product at each price level are established by Microsoft. The actual price you pay for each license will be determined by the Large Account Reseller from whom you acquire your licenses. Prices do not include applicable taxes.

Prices are established by country and may be quoted in the local currency. Although Select pricing is available worldwide, it may not always be available in all currencies.

Prices are subject to change. The most common reasons that prices change are promotional pricing—which is made available for a specified time period—and movements in foreign currency exchange rates. Your Large Account Reseller is responsible for informing you of price changes that may affect your agreement.

Up-Front Payment Option

When enrolling in the Select 4.1 program at the A or B price levels, you can receive up to an additional 10 percent discount by placing an initial order for at least the minimum forecast for that level (per pool). This initial order must be submitted to Microsoft at the same time as the Master Agreement to qualify for the up-front discount.

SIGNING UP FOR SELECT

Outsourcing Option

You can use a third party vendor to finance the acquisition of, or acquire and manage, products for any portion of your organization. To do this, the vendor you use must become a "Select Outsourcer" by completing, signing, and submitting an "Outsourcer Enrollment."

As a Select Outsourcer, the vendor may acquire licenses solely for the purpose of renting, leasing, or otherwise providing licenses to your organization and affiliates during the term of your Master Agreement. As the Select customer, you retain the software usage rights at all times; these rights do not pass to the outsourcer. Please check with your Large Account Reseller for more information about Outsourcing.

The Select agreement is designed to extend the benefits of Select to your entire organization—including all affiliates—with a single agreement. This enables you to capitalize on your total volume purchasing power, whether your affiliates are in a single country or located around the world.

The Master Agreement

The document that sets up the purchasing relationship for the entire organization is the "Master Agreement." This simple document sets the overall terms and conditions of your participation in Select.

You and the contracting Microsoft affiliate will execute a Master Agreement.

The Master Agreement governs the software acquisitions of each customer location that chooses to participate in the agreement. Your affiliates may participate under this Master Agreement. Your "affiliates" are legal entities that you own, that own you, or that are under common ownership with you. The term "ownership" means more than 50% ownership.

You and your affiliates may acquire licenses under the Master Agreement without a separate enrollment, but if purchasing sites wish to choose a different Large Account Reseller, they must sign separate Enrollment Agreements (see below).

The license terms define how you can use the products you acquire under your Select agreement. The terms and conditions, the "Product Use Rights", are a legally binding part of the agreement, and are provided with the Master Agreement.

The Enrollment Agreement

Each location within your organization that wishes to acquire licenses under your Select agreement must either be eligible and listed on the Affiliate Participation Form, or must complete an Enrollment Agreement that designates the Authorized Large Account Reseller from which licenses will be acquired. You can have multiple Enrollment Agreements, depending on how and where you want to acquire licenses.

Each separate enrollment site must acquire at least 500 points of product through the Select program to retain eligibility.

The Address Information Form

You use this form to provide us with the name, address, and contact information we'll need to have about your organization.

Large Account Resellers

You order all licenses from the Large Account Reseller you designate on your Select Master Agreement (or Enrollment Agreement, for separate enrollments). Large Account Resellers are independent companies that can exercise discretion regarding distribution, invoicing, final pricing and collections.

There is no limit to the number of Large Account Resellers you can work with, as long as you have completed an Enrollment Agreement with each of them. However, you must acquire at least 500 points per Enrollment Agreement during the term of the agreement.

In addition to providing you with licenses for Microsoft products, your Large Account Reseller can offer you a number of additional services, such as migration planning, technical support, asset management, and, in some cases, payment options.

You can change your Large Account Reseller at any time during the course of your agreement, as long as you notify us in writing.

AFTER YOU BECOME A SELECT CUSTOMER

Here's how your Select agreement works over the two-year term of the agreement.

The Term of the Agreement

Your agreement begins the day Microsoft signs the Master Agreement (the effective date). The Master Agreement term is 24 full months. If your Master Agreement is signed in the middle of a calendar month, your agreement term will include the remainder of the current calendar month, plus the next 24 months. Your Select agreement term is therefore two years, plus the remainder of the month in which your Master Agreement is accepted by Microsoft.

Keeping your Select Forecast on Track

During the term of your Select agreement, you and your enrolled affiliates must each place an order with your respective Large Account Reseller for each copy of software installed, by the end of the month in which the license is used. The total number of licenses ordered from each product pool is combined to count toward your overall, pool-specific forecast. Microsoft and your Large Account Reseller will help keep you informed of your performance against your two-year forecast. We will check your consumption rate (the rate at which you order licenses) twice during the term of your agreement to make sure that your consumption is in line with the your overall, pool-specific forecast. As a Select customer, you must acquire at least 25 percent of your point forecast per pool by the end of the sixth full month of your Master Agreement, and 50 percent of your forecast per pool by the end of the first full year of your Master Agreement.

For example, if you forecast total acquisitions of 8,000 points, 25 percent of the points, or 2,000, must be ordered through your Large Account Reseller by the end of the sixth month of the agreement; 50 percent (4,000) must be acquired by the end of the first year, with the balance ordered by the end of the second year.

If your aggregate acquisitions for a product pool are less than 25 percent of your forecast at the end of your first six months in the Select program, a price level consistent with your then-current consumption rate will be reassigned to that pool on your Master Agreement. The new forecast level will be effective as of the beginning of the seventh full month and will apply to all licenses acquired through the end of the term of the Master Agreement (unless affected by the first-year check, below).

If your aggregate acquisitions are less than 25 percent of Level A forecast requirements at the end of the sixth month, the Select agreement for that product pool will be terminated as of the 15th day of the seventh month of the Master Agreement.

A second check will be made at the end of the twelfth month of your agreement. At this time, if your aggregate acquisitions are less than 50 percent, a price level consistent with your then-current consumption rate will be reassigned to your Master Agreement.

Just as with the six-month check, if your aggregate acquisitions are less than 50 percent of Level A forecast requirements at the end of the first year, the Select agreement for that product pool will be terminated as of the 15th day of the next month.

ADDITIONAL INFORMATION

The Quarterly Summary

After each calendar quarter of your Select agreement, Microsoft will send you a Quarterly Performance Summary to help you comply with the 6-month and 12-month progress requirements. The Quarterly Performance Summary shows the total number of licenses that have been acquired to date by your entire organization under your Select agreement.

The following information gives you more details about your Select agreement.

Available Products

A wide range of Microsoft products is available under Select. Most of these products are offered in multiple languages and many are available for more than one platform. The Select Product List provides details on available platforms, point values, and other issues relating to specific products. The Select Product List is updated regularly, and can be requested from your Large Account Reseller.

Right To Copy

Once you receive written notification that Microsoft has accepted your Master Agreement or Enrollment Agreement (if a Master Agreement is already in place), you have the right to start making copies of the products from your specified product pool or pools. The Master Agreement provides the terms and conditions of reproducing and using the software. Please review the agreement for details and limitations.

Changing Use Rights

Microsoft reserves the right to change the use rights in the future by amending the Product Use Rights. Generally, such amendments will be made to accommodate the addition of new products or the introduction of new versions of products. These changes would not affect licenses previously acquired.

Orders and Confirmations

You place orders with your Large Account Reseller for every copy of software made under your Select agreement. All orders for licenses must be made by the end of the calendar month in which the license is first used. At the end of each month, we process all orders placed by the Large Account Reseller on your behalf and issue license confirmations.

The license confirmation acts as your primary proof of purchase for all licenses acquired within the specified time period. If you'd like, you can have your Large Account Reseller accept and keep the License Confirmations on your behalf.

Proper Management of Software Distribution

We recognize the importance of making legal software use as easy as possible. One of the benefits of Select is that it makes it easy to procure and install Microsoft software products by offering additional media options and instant usage rights. However, it is your responsibility to track the reproduction and use of products in a way that ensures an accurate number of licenses are ordered from your Large Account Reseller.

As is common within the software industry, when you are given the right to reproduce and use the software on your premises, the vendor of the software has the right to audit you. *Microsoft retains the right to audit you to ensure compliance with the terms of the agreement.*

Documentation

For an additional fee, you can purchase user manuals from your Large Account Reseller for the products acquired under your Select agreement. Note: User manuals may not be available for all products in all countries. Microsoft Press books are also available for many Microsoft products, providing additional documentation options.

Disk Sets

As a Select customer, you have the option of obtaining your Microsoft software in a variety of forms. You will receive one Select CD-ROM disk set upon acceptance of your agreement, and you will receive one subscription for Select CD-ROM updates at no charge. Update Select CD-ROM sets are sent to you approximately every 45 days. In addition, you may also purchase additional disk sets or an additional subscription for your particular product pool(s) and languages through your Large Account Reseller. Some other options for obtaining media include individual product CD-ROMs or disk sets. Contact your Large Account Reseller for details.

Product Support Services

Product Support is not included in the price for products under Select.

We also offer a wide range of fee-based product support offerings through Service Advantage, to help you with your Microsoft product deployment. The terms and conditions for the most popular Microsoft Service Advantage support offerings—Premier and Premier Global—or for Microsoft Consulting Services can be added to your Select agreement if you choose. This optional support addendum allows you to simply have one agreement for both your software acquisition and support. However, just as with the licenses you acquire under Select, separate orders must be placed for any support options you choose to use after the agreement is in place.

THANK YOU.

For more information about Microsoft Service Advantage offerings, please see our Internet site at <http://www.microsoft.com>.

We thank you for choosing Microsoft Select as your volume software licensing program. We're confident that you'll find your Select agreement will help reduce your total cost of software ownership and make it easier to acquire licenses for Microsoft products on an ongoing basis.

The Select program has evolved over time in response to customer needs and requests. We welcome your comments about the program. Please contact your Large Account Reseller, or send your comments directly to Microsoft by using the Feedback section on our World Wide Web site at <http://www.microsoft.com/licensing>.

You can also find more information on the Select program and other licensing options, as well as product, training, and support information at the Microsoft home page, <http://www.microsoft.com>.

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Microsoft Volume License Program Comparison

Corporate Programs

	<i>Open License</i>	<i>Select 4.0</i>	<i>Enterprise Agreement</i>
Customer Profile	Small to medium, with desire for flexible transactions, no ongoing commitment	Large and/or multinational, with mixed Microsoft product requirements, decentralized purchasing, desire to forecast	Large and/or multinational, with desire to standardize on Microsoft platform across enterprise, centralized purchasing
Size of Customer	5-1,000 PC's and above	1,000+ PC's	500+ PC's
Products Included	Extensive product listing available. Reference most current version of the Open License Product List.	Extensive product listing available. Reference most current version of the Select Product List.	Licenses to run Office or Office Pro, Windows® 98 or Windows NT® Workstation, and BackOffice® CALs as part of the Program offering. Additional products available via separate Select Enrollment.
Term	2 years	2 years	3 years (optional 4 th year extension)
Volume Discount and Pricing	Tiered pricing based on the <i>size of the initial order</i> . Products are grouped into three <i>product pools</i> – Application, System and Server – and each product is assigned a <i>point value</i> as a way to determine <i>discount levels</i> . For as little as 1 point, Customers can place <i>reorders</i> during the term of the agreement and get the same discount level as with their initial order, even if those reorders are significantly smaller than the original order. Discount Levels: A = 10 points B = 150 points C = 500 points	Tiered pricing based on a <i>volume forecast</i> over the term of the agreement. Products are grouped into three <i>product pools</i> – Application, System and Server – and each product is assigned a <i>unit point value</i> as a way to determine <i>discount levels</i> . Customers place <i>monthly orders</i> with their Large Account Reseller for any amount of product copied during the month. Discount Levels: A = 2,000 units B = 8,000 units C = 20,000 units D = 50,000 units	Per desktop price based on a combination of <i>volume commitment and current installed base</i> . Products included are listed above. Pricing calculation determined by volume commitment (based on <i>total desktop estimate</i>) and previous commitment (based on the <i>amount of certain licensed products purchased at the most current version</i>). Price is spread over three equal annual payments, with annual payments for desktops added during the term.
Getting and Staying Current on software versions	Can get the most current version of the software through a version or competitive upgrade. Can get and stay current by acquiring <i>Upgrade Advantage</i> for an additional fee.	Can get the most current version of the software through a version or competitive upgrade. Can get and stay current by acquiring <i>Upgrade Advantage</i> for an additional fee.	Rights to get and stay current included for Office or Office Pro, Windows® 98 or Windows NT® Workstation, and BackOffice® CALs throughout the term.
Sales Channel	All resellers	Microsoft Authorized Large Account Resellers (LARs) only	Microsoft Authorized LARs only.
Customer Locations Covered	Single customer location or legal entity. **"Regional Affiliate Offering" also available worldwide. Sublicensing and aggregation prohibited.	Customer can choose which global locations they would like to sublicense to or add through separate Select Enrollments under the Master Agreement.	Includes all global locations (enterprise-wide commitment) under one Enterprise Enrollment Agreement.
Product Fulfillment	Must acquire initial software separately.	Customer is sent CD-ROM kits with products on a regular basis throughout the agreement term.	Customer is sent CD-ROM kits with products on a regular basis throughout the agreement term.
Initiating Agreement and Receiving Licenses	Place order with any reseller and receive license confirmation from Microsoft.	Sign an agreement with Microsoft through a LAR and receive monthly License Confirmation for licenses acquired each month.	Sign an agreement with Microsoft through a LAR and receive a License Confirmation at the end of the agreement for all licenses acquired. For Select 4.0 licenses ordered outside of the Enterprise Agreement, receive monthly License Confirmation for licenses acquired each month.

*The Open License Regional Affiliate Offering is available for Affiliates to place orders using their Parent company's Open License authorization number(s) and price discount level within a defined region. For complete details, please check http://microsoft.com/enterprise/licensing/open/open_home.htm.

For further information re. Microsoft's volume licensing programs – <http://www.microsoft.com/licensing>

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Microsoft® Licensing FLASH

July 2, 1999

The Licensing FLASH is an internal publication developed by Sales Solutions to inform the Microsoft worldwide field sales force of the latest Select, Enterprise Agreement, Open License, Embedded License, and Commercial License information, program enhancements, support tools and Q&A. This Licensing FLASH document is available on InfoWeb at <http://infoweb/volumelicensingflash>.

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GENERAL PROGRAM INFORMATION

Enterprise Agreement Financial Comparison Tool and Pricing Tool Updated

The Enterprise Agreement financial comparison tool has been updated and is now available at \\for\select\enterprise agreements\tools\financial comparison. The Enterprise Agreement pricing tool will be updated within the next week and will be available at \\for\select\enterprise agreements\pricing tool.

North American Enterprise Agreement 4.1 Field Guide Now Available

The North American Enterprise Agreement 4.1 Field Guide is now available to the Microsoft field sales force as a tool to help you understand and negotiate Enterprise Agreements. It will be posted to InfoWeb as well as to \\for\select\enterprise agreements\field guide. Versions for other regions are being worked on and will be made available at a later date (TBD).

Summary

The EA 4.1 Field Guide contains material that will help you explain to a customer what some of the terms in the Enterprise Agreement means and why they contain some of the standard provisions they do. The materials will also help you anticipate common customer objections and common requests for changes in the terms and conditions, and position responses to those objections and requests. Finally, the materials include pre-approved alternative provisions that can be used to help you close deals where the situation requires them.

This guide contains a great deal of Microsoft confidential information. Treat it with care. Please help preserve the value of the guide by holding it in confidence. Under no circumstances should this guide be shown to (or its existence be disclosed to) any customer or LAR or any other person outside of Microsoft. Violation of this obligation of confidentiality will be reported to management.

Enterprise Agreement 4.1 Datasheet Now Available

The Enterprise Agreement datasheet has been updated to include information on additional products that are now available to be included in EA's. These additional products include the Microsoft Enterprise Learning Library, Microsoft Project, Microsoft FrontPage, Microsoft Visual Studio Professional, Microsoft Visual Studio Enterprise Edition, and Microsoft Developer Network (Library, Professional, and Universal). As with all Enterprise Agreement products, customers are entitled to run any upgrades to elected products that release during the life of the agreement. This datasheet is posted on InfoWeb, ms.com/licensing, and Channel Partner Web.

Office 2000 With MultiLanguage Pack and Enterprise Agreements

Enterprise Agreement customers who have chosen and paid for the "all languages" platform are allowed to use the MultiLanguage Pack. Customers who selected "listed languages" are not.

Select Alias Migrates to InfoDesk

The Select alias has migrated to InfoDesk effective July 5th, 1999. The move of the Select alias to InfoDesk allows us to be more consistent with the product groups with respect to how questions and feedback can be submitted. This change also allows us to track volume licensing questions and trends more effectively for future changes to the programs. In order to submit a question to the Volume Licensing Team, please use the following link: <http://infodesk/volume>.

SQAD Migrates to InfoDesk

Effective immediately, SQAD (Select Question & Answer Database) can only be accessed via InfoDesk, it is no longer available via <http://online-squad>. The new URL is: <http://infodesk/squad>. This move was done in conjunction with the move of the Select alias to InfoDesk. If you have any problems accessing SQAD, you can send email to the *infodesk* alias for assistance.

Re-imaging from the Select CD-ROMs

It has come to the attention of the Volume Licensing team that there is currently an issue which involves customers who have an OEM operating system license (for Windows NT Workstation 4.0, for example) which is not enrolled

in Select Upgrade Advantage. Since the full Windows NT Workstation 4.0 code is on the Select CDs (because we allow license upgrades to Windows NT Workstation from competitive products), customers have apparently been wiping their machines and reinstalling a standard image that includes Windows NT Workstation code taken from the Select CDs, but they have not been enrolling in Windows NT Workstation Upgrade Advantage. The Select agreement states that for every copy made, the customer must have a Select license, so this activity is not legal because the customer only has an OEM license and is not covered by the terms and conditions of the Select agreement.

Section 5 of the Select 4.1 Master Agreement states:

5. **Orders.** A license must be ordered in the month in which the copy of a product is first run from a particular computer or similar device. Your order must specify version number, language and country of usage for each license. Price and payment terms for all licenses and subscriptions ordered are determined by agreement with the chosen reseller. We will issue license confirmations covering all licenses and Upgrade Advantage subscriptions ordered. The license confirmations are your evidence of license.

In order to install products from the code on the Select CDs, the customer must have acquired a corresponding license under Select (new license, upgrade license, or Upgrade Advantage). Please communicate this message to the Microsoft field sales force, the channel, and your customers.

II. PRODUCT UPDATES

Office 2000 Premium and Education Select and Open License

Office 2000 Premium is not available via Education Select or Open License for Education. Office Premium was inadvertently added to the May and June academic Select price lists, but will be removed from the July academic Select price list. Customers who ordered Office Premium in May and June are still entitled to use the product, but they will not be able to order any additional licenses effective July 1st.

Office 2000 Developer Product Upgrade Clarification

The Office 2000 Developer Product Upgrade (PUP) is intended to only be available to customers who have a license for Office 2000 Premium. However, the current Select Product Lists indicate that the Office 2000 Developer PUP is available to customers who have a license for Office 2000 Professional. The August Select Product Lists will be changed to indicate that only Office 2000 Premium qualifies for the Office 2000 Developer PUP.

Change to Office Family Upgrade Qualifications

The August Select and Open License Product Lists will be updated in order to mirror the list of products that qualify for the retail Office Family Version/Competitive Upgrades. This change will affect all versions of Office Standard, Office Professional, Office Premium, Office Developer, Office Small Business, Word, Excel, PowerPoint, and Access under Select and Open. For a complete list of qualifying products for the Office Family upgrades, please see <http://www.microsoft.com/office/order/volume.htm>.

BackOffice 4.5 Price Changes Under Select and Open

In order to correct existing price anomalies, BackOffice 4.5 pricing for Version Upgrades and Upgrade Advantage will be adjusted effective with the August Select and Open corporate and academic price lists.

Office 2000 With MultiLanguage Pack Licensing

Select and Open License customers who acquire a license for a localized version of Office 2000 may switch and use the equivalent version of Office 2000 with MultiLanguage Pack, provided the price for the MultiLanguage version is equal to or less than the price of the localized version. For example, if the French version of Office 2000 has an ERP of \$400 and the MultiLanguage version also has an ERP of \$400, the customer is eligible to use the MultiLanguage version in place of the French version for no additional charge. However, if the MultiLanguage version was \$450, the customer would need to purchase a Product Upgrade in order to use the MultiLanguage version.

New Select and Open License Price List Products Available August 1, 1999

Product	Select Price List	Open License Price List	Select CD Update Kit	WWF Price List	Free Upgrade/Technology Guarantee (for N. America)	Product Info Web Links
Desktop Applications/Developer Tools						
Vizact 2000	8/99	8/99	8/99	8/99	N/A	
Bookshelf 2000 (corp. only – already in academic)	9/99	8/99	8/99	8/99	N/A	

* For stated Free Upgrade/Technology Guarantee information for countries outside North America, as well as for information on available upgrade licenses and their qualifying products, please refer to the Select and/or Open License Product List at the following Web locations.

Select Product List: _____

Open License Product List: _____

III. OPERATIONAL UPDATES

Windows 98 Service Pack 1 Available on the Select CDs

Windows 98 Service Pack 1 (SP1) will be included in the August 1999 Select CD-ROM kit for use by all customers who are currently licensed for Windows 98 via Select.

Following are details on what is included in the Windows 98 Service Pack 1. With the exception of the Outlook Express Y2K Update, all of these components are included in Windows 98 Second Edition (SE). The Outlook Express Y2K update is only applicable to users of IE4 and OE4 – and therefore is not included in Windows 98 SE – since Win 98 SE can only use IE5/OE5 and beyond.

The contents of the Windows 98 Service Pack 1 are:

- **Internet Explorer 4.01 Service Pack 2**
Includes Year 2000 compliance and security fixes, improves what you see on your monitor, and resolves other minor issues. Because Service Packs are cumulative, this release contains all previous Service Pack updates and any new updates that are available.
- **Windows 98 Year 2000 Update and Update 2**
Corrects several minor issues associated with generating dates on your computer on or after January 1, 2000.
- **Windows 98 System Update**
Includes features for networking, security and accessibility issues.
- **Outlook Express Year 2000 Update**
Resolves a Year 2000 problem with Outlook Express 4.01.

SQL Server 7.0 Service Pack 1 Available on the Select CDs

SQL Server 7.0 Service Pack 1 (SP1) will be included in the August 1999 Select CD-ROM kit for use by all customers who are currently licensed for SQL Server 7.0 via Select.

For a list of all the fixes in SQL Server 7.0 SP1, please see the product group's Web site at <http://support.microsoft.com/support/sql/content/spack.asp>.

Change of Channel Partner Process for MSLI

Summary

On Tuesday June 1, 1999, Microsoft implemented changes to the Change of Channel Partner process and forms for all agreements handled by MSLI, LLC. The changes incorporate a better definition of the effective date of change requests and detailed procedural guidelines for changes under an Enterprise Agreement. Microsoft has incorporated these changes due to inconsistencies in defining the effective date of change and lack of procedural guidelines under the current model. The streamlining of the process and updating of the forms better emulate the current Agreement context and processing structure.

Action (as communicated to the LARs)

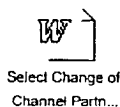
- Please review the attached "new" Change of Channel Partner form and Policy & Procedure inserts.
- Implement the updates to the procedures within your organizational processes.
- Updated copies of the Policies & Procedures Handbook and Forms can be obtained on CP Web.
- Please be certain to disseminate this information throughout your organization.

Details

The updated Change of Channel Partner process now makes all changes effective upon Microsoft's acceptance of the change request. The change date is no longer assigned by the date on which the customer signs the request letter. Orders for Select licenses copied on or before the termination date are the responsibility of, and will be invoiced to the Terminated Reseller. Select licenses copied after the date of termination are the responsibility of, and will be invoiced to the New Reseller.



COCP P&P.doc



Select Change of Channel Partn...

Operations Month-end Processing Cut-off Date

July 27th is the month-end processing cut-off date for *valid** Select 3.0 & 4.x Standard and Enterprise Agreements. If received by the cut-off date specified, Microsoft will guarantee processing for July fiscal month end.

Action:

- Submit all Agreements by the specified cut-off date if they need to be processed by July fiscal month end.

Details:

- *Valid** Agreements received after the specified cut-off date will be processed on a best effort basis (volume and time permitting). Processing will not be guaranteed by fiscal month-end unless received by the specified cut-off date.
- *Invalid*** Agreements received by the specified cut-off date will be processed on a best effort basis (volume and time permitting).
- To ensure Valid Enterprise Agreements and Standard Agreements are submitted, please utilize the Agreement Checklists created by Operations.

Questions? Contact the SELQUEST alias for additional assistance.

**Valid* is defined as a 100% complete and accurate agreement. There's no need to contact the LAR for additional information.

***Invalid* is defined as an agreement which requires additional information from the LAR in order to be processed.

IV. LAR MONTHLY UPDATE

Location of Monthly Licensing LAR Updates

The Monthly Licensing LAR Update (U.S.), a derivative of the Licensing FLASH, is designed to give Select-authorized LARs/LADs an update of Select and Open License components and information. To obtain the most current copy of the Monthly Licensing LAR Update, please refer to InfoWeb at <http://infoweb/IP25Pub/InfoWeb/Nav/area.htm? sectionID=338701& categoryID=338702& topicID=79112& contentID=307491>.

11. CHANGE OF CHANNEL PARTNER

11.1 CHANGE OF CHANNEL PARTNER PROCESS STANDARD AGREEMENTS

Policy Statement: New Reseller must submit the original "Change of Channel Partner Letter" to WLO Operations Center within five business days of receipt from Select Customer. The "Effective Date" of the change will occur upon MSLI, LLC's acceptance of the change request.

• **Service Level Agreement:** WLO Operations Center will process all valid "Change of Channel Partner Letters" within an **average** of three **calendar** days from the date the "Change of Channel Partner Letter" is received in WLO Operations Center.

• **Procedure/Implementation:** The Select Customer is responsible for notifying the existing Reseller (the "Terminated Reseller") of their upcoming termination. WLO Operations Center requires that you submit your request at least 30 days prior to any billing or anniversary dates. This facilitates a smooth transition of Maintenance/Upgrade Advantage and fulfillment subscriptions. Any outstanding billing issues with previous Reseller will be escalated to LAM for resolution. Orders for Select licenses copied on or before the termination date should be placed with the Terminated Reseller. The Select Customer must submit payment for these products to the Terminated Reseller. Select licenses copied after the date of termination should be ordered from New Reseller.

New Reseller Action

- ❖ Receives "Change of Channel Partner Letter" from Select Customer.

- ❖ Ensures Select Customer accurately completes:
 - Enrollment number(s) and participating reseller information.

 - Maintenance/Upgrade Advantage Payment Terms. (Optional)

 - Signature blocks as defined on the "Change of Channel Partner Letter."

- ❖ Retains copy for internal records.

- ❖ Sends original letter via courier to:

MSLI: Microsoft Licensing, Inc. Dept. #551 6100 Neil Road; Ste 210 Reno, NV 89511-1132	APOC: Microsoft Operations Pte Ltd. 438B Alexandra Road #04-09/12, Dept #551 Block B, Alexandra Technopark Singapore 119968	EOC: The Local Microsoft Subsidiary
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- ❖ Retains Airway bill number for tracking purposes.
- ❖ Receives regional support alias confirmation of receipt and retains log number for tracking purposes.

Microsoft Action

- ❖ Receives "Change of Channel Partner Letter" from newly appointed Reseller.
- ❖ Verifies that the New Reseller is an approved LAR/LAD.
- ❖ Confirms receipt via regional support alias notification and provides log number.
- ❖ Reviews "Change of Channel Partner Letter" for accuracy and validity.
- ❖ Communicates issues via regional support alias.
- ❖ Signs and dates "Change of Channel Partner Letter."
- ❖ Enters "Change of Channel Partner Letter" into Microsoft Licensing System.
- ❖ The Select Enrollment Number remains the same.
- ❖ Effective date of change is the date on which Microsoft accepts and signs the "Change of Channel Partner Letter."
- ❖ Faxes "Acceptance Letter" to New Reseller and Select Customer.
- ❖ Sends regional support alias confirmation to New and Terminated Reseller.
- ❖ Distributes "Change of Channel Partner Letter" via courier:

One signed original:	<ul style="list-style-type: none"> • Select Customer (United States and Canada) • Microsoft Subsidiary (International) for distribution to Reseller then Select customer (Subsidiary and LAR are responsible for making their copies and forwarding original to Select customer)
One signed copy:	<ul style="list-style-type: none"> • Direct to Reseller (United States and Canada) • Microsoft Legal Department (United States and Canada) • WLO Operations Center Records

- ❖ Provides copy of Enrollment Agreement upon request from New Reseller.

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Refer to Manual for:

- "Scheduled Billings Following a Change of Channel Partner", Chapter 11.2.

Refer to Appendix for:

- Microsoft Select Change of Channel Partner – Overview of Changes, Version 3/4.x
(North America version).
- Microsoft Select Change of Channel Partner – Overview of Changes, Version 3/4.x
(International version).

11.2 SCHEDULED BILLINGS FOLLOWING A CHANGE OF CHANNEL PARTNER

Policy Statement: New Reseller must provide a Purchase Order number for Future Scheduled Billings within 30 days of the approval date of a Change of Channel Partner.

• **Procedure/Implementation:** Upon approval of a Change of Channel Partner, WLO Operations Center will create a report that contains all Scheduled Billings to be invoiced to the New Reseller. This report is referred to as the "Change of Channel Partner PO." The "Change of Channel Partner PO" is sent via e-mail to the reseller. Reseller reviews the line items in the report with the Select Customer for accuracy and provides a **manual** Purchase Order number to WLO Operations Center.

Microsoft Action

- ❖ Receives notification and processes a Change of Channel Partner.
- ❖ Creates "Change of Channel Partner PO."
- ❖ Sends "Change of Channel Partner PO" via e-mail to New Reseller referencing regional support alias log number.
- ❖ Requests New Reseller provide a Purchase Order number within 30 days for Future Scheduled Billings.
- ❖ Receives Purchase Order number from Reseller within thirty days of the approval of a Change of Channel Partner.
- ❖ Notifies Licensing Account Manager if New Reseller does not respond within thirty-five days of Change of Channel Partner.

- ❖ Assigns internally generated Purchase Order number if one is not provided using the Enrollment number and date.

EXAMPLE: 1234567(1/25/98)

- ❖ Invoices next coverage period of Future Scheduled Billings to New Reseller.
- ❖ References the Purchase Order number provided by the Reseller or internally generated Purchase Order number, if not provided.

LAR/LAD Action

- ❖ Receives "Change of Channel Partner PO" from regional support alias.
- ❖ Verifies line items with Select Customer.
- ❖ Enters Purchase Order number in the appropriate space on the "Change of Channel Partner PO."
- ❖ Sends "Change of Channel Partner PO" via e-mail to regional support alias referencing the original log number.
- ❖ Notes any discrepancies on the "Change of Channel Partner PO".

Refer to Manual for:

- "Invoicing Terms", Chapter 10.1.
- "Change of Channel Partner", Chapter 11.

Refer to Appendix for:

- Sample "Change of Channel Partner PO."

11.3 CHANGE OF CHANNEL PARTNER PROCESS ENTERPRISE AGREEMENTS

Policy Statement: New Reseller must submit the original "Change of Channel Partner Letter" to WLO Operations Center within five business days of receipt from Select Customer. The "Effective Date" of the change will occur upon MSLI, LLC's acceptance of the change request, and receipt of the signed "revised Channel Price Sheet" with Purchase Order.

- **Service Level Agreement:** WLO Operations Center will process all valid "Change of Channel Partner Letters" within an **average** of three **calendar** days from the date the "Revised Channel Price Sheet" is received in WLO Operations Center.

- **Procedure/Implementation:** The Select Customer is responsible for notifying the existing Reseller (the "Terminated Reseller") of their upcoming termination. WLO Operations Center requires that you submit your request at least 30 days prior to any billing or anniversary dates. This facilitates a smooth transition of Maintenance/Upgrade Advantage, Annual Payments, True-Ups, and fulfillment subscriptions. Any outstanding billing issues with previous Reseller will be escalated to LAM for resolution. Orders for Select licenses copied on or before the termination date should be placed with the Terminated Reseller. The Select Customer must submit payment for these products to the Terminated Reseller. Select licenses copied after the date of termination should be ordered from New Reseller.

New Reseller Action

- ❖ Receives "Change of Channel Partner Letter" from Select Customer.
- ❖ Ensures Select Customer accurately completes:
 - Enrollment number(s) and participating reseller information.
 - Maintenance/Upgrade Advantage Payment Terms. (Optional)
 - Signature blocks as defined on the "Change of Channel Partner Letter."
- ❖ Retains copy for internal records.
- ❖ Sends original letter via courier to:

MSLI: Microsoft Licensing, Inc. Dept. #551 6100 Neil Road; Ste 210 Reno, NV 89511-1132	APOC: Microsoft Operations Pte Ltd. 438B Alexandra Road #04-09/12, Dept #551 Block B, Alexandra Technopark Singapore 119968	EOC: The Local Microsoft Subsidiary
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- ❖ Retains Airway bill number for tracking purposes.
- ❖ Receives regional support alias confirmation of receipt and retains log number for tracking purposes.
- ❖ Receives "Revised Channel Price Sheet"
- ❖ Signs revised Channel Price Sheet and includes Purchase Order number.

- ❖ Sends revised Channel Price Sheet via courier to:

MSLI: Microsoft Licensing, Inc. Dept. #551 6100 Neil Road; Ste 210 Reno, NV 89511-1132	APOC: Microsoft Operations Pte Ltd. 438B Alexandra Road #04-09/12, Dept #551 Block B, Alexandra Technopark Singapore 119968	EOC: The Local Microsoft Subsidiary
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- ❖ Retains Airway bill number for tracking purposes.

- ❖ Receives revised Acceptance Letter.

Microsoft Action

- ❖ Receives "Change of Channel Partner Letter" from newly appointed Reseller.
- ❖ Verifies that the New Reseller is an approved LAR/LAD.
- ❖ Confirms receipt via regional support alias notification and provides log number.
- ❖ Reviews "Change of Channel Partner Letter" for accuracy and validity.
- ❖ Communicates issues via regional support alias.
- ❖ Prepares revised Channel Price Sheet and sends to New Reseller via regional support alias.
- ❖ Receives signed revised Channel Price Sheet
- ❖ Reviews revised Channel Price Sheet for signature and Purchase Order number.
- ❖ Signs and dates "Change of Channel Partner Letter."
- ❖ Enters "Change of Channel Partner Letter" into Microsoft Licensing System.
- ❖ The Select Enrollment Number remains the same.
- ❖ Effective date of change is the date on which Microsoft accepts and signs the "Change of Channel Partner Letter."

- ❖ Faxes "Acceptance Letter" to New Reseller and Select Customer.
- ❖ Sends regional support alias confirmation to New and Terminated Reseller.
- ❖ Distributes "Change of Channel Partner Letter" via courier:

One signed original:	<ul style="list-style-type: none"> • Select Customer (United States and Canada) • Microsoft Subsidiary (International) for distribution to Reseller then Select customer (Subsidiary and LAR are responsible for making their copies and forwarding original to Select customer)
One signed copy:	<ul style="list-style-type: none"> • Direct to Reseller (United States and Canada) • Microsoft Legal Department (United States and Canada) • WLO Operations Center Records

- ❖ Provides copy of Enrollment Agreement upon request from New Reseller.

Refer to Manual for:

- "Scheduled Billings Following an Enterprise Change of Channel Partner", Chapter 11.4.

Refer to Appendix for:

- Microsoft Select Change of Channel Partner – Overview of Changes, Version 3/4.x (North America version).
- Microsoft Select Change of Channel Partner – Overview of Changes, Version 3/4.x (International version).

11.4 SCHEDULED BILLINGS FOLLOWING AN ENTERPRISE CHANGE OF CHANNEL PARTNER

Policy Statement: New Reseller must provide a Purchase Order number for Future Scheduled Billings on "Revised Channel Price Sheet", before Change of Channel Partner will be processed by Microsoft.

• **Procedure/Implementation:** Upon receipt of a Change of Channel Partner letter, WLO Operations Center will create a "Revised Channel Price Sheet" that contains all Scheduled Billings to be invoiced to the New Reseller. The "Revised Channel Price Sheet" is sent via e-mail to the New Reseller. Reseller reviews the line items in the report, signs their acceptance, and provides a Purchase Order number to WLO Operations Center.

Microsoft Action

- ❖ Receives notification requesting an Enterprise Agreement Change of Channel Partner.
- ❖ Creates "Revised Channel Price Sheet."

- ❖ Sends " Revised Channel Price Sheet " via e-mail to New Reseller referencing regional support alias log number.
- ❖ Requests New Reseller provide a Purchase Order on "Revised Channel Price Sheet."
- ❖ Receives signed "Revised Channel Price Sheet" including purchase order number.
- ❖ Notifies Licensing Account Manager if New Reseller does not respond within ten days of Change of Channel Partner request.
- ❖ Invoices next coverage period of Future Scheduled Billings to New Reseller.
- ❖ References the Purchase Order number provided by the New Reseller.

LAR/LAD Action

- ❖ Receives " Revised Channel Price Sheet " from regional support alias.
- ❖ Verifies accuracy of future scheduled billings.
- ❖ Enters Purchase Order number in the appropriate space on the " Revised Channel Price Sheet "
- ❖ Sends " Revised Channel Price Sheet " to regional support alias referencing the original log number.
- ❖ Notes any discrepancies on the " Revised Channel Price Sheet ".

Refer to Manual for:

- "Invoicing Terms", Chapter 10.1.
- "Change of Channel Partner", Chapter 11.

Refer to Appendix for:

- Sample "Revised Channel Price Sheet."

APPENDIX: SELECT "CHANGE OF CHANNEL PARTNER" (MSLI, LLC - LATIN AMERICA)

MSLI, LLC
Dept. #551
6100 Neil Road; Ste 210
Reno, NV 89511-1137

Re: Change of Channel Partner

(All Fields Must be Completed by LAR)

Name of Select/Enrolling/Enterprise
Customer ("customer"): _____

Agreement (e.g., Standard Enrollment,
Enterprise Enrollment) number(s) assigned
by MSLI, LLC: _____

Name of existing Large
Account Reseller ("terminated reseller"): _____

Name of newly appointed Large
Account Reseller ("new reseller"): _____

Except as specifically amended by this Change of Channel Partner request, all provisions of the Enrollment Form/Agreement shall remain unchanged and in full force and effect. This Change of Channel Partner is not legal and binding until it has been signed by MSLI, LLC. The "Effective Date" of the change will occur upon MSLI, LLC's acceptance of the Change request. Once executed, the new reseller will receive copy of a revised Acceptance Letter noting the effective date of the change.

(In the case of Enterprise Enrollments, the change will not take effect until the updated Channel Price Sheet is received with the appropriate Purchase Order number.)

Maintenance/Upgrade Advantage (If known, please complete, otherwise, MSLI, LLC will complete. This is for Select 3.x & 4.x only.)

Please check the box that indicates how the customer's Maintenance or Upgrade Advantage and Upgrade Advantage Plus payments were defined.

- Payment Option 1: Maintenance, Upgrade Advantage or Upgrade Advantage Plus was not ordered under this Select 3.x/4.x Agreement.
- Payment Option 2: All Maintenance, Upgrade Advantage or Upgrade Advantage Plus ordered to date under this Select 3.x/4.x Agreement was prepaid through the terminated reseller.
- Payment Option 3: All outstanding annual payment(s) for Upgrade Advantage or Upgrade Advantage Plus ordered under this 4.x Enrollment Form/Agreement should be billed to the new reseller at the beginning of the month on which such annual payment(s) would normally come due under that Enrollment Form/Agreement. *Please note, you may only elect this option if this reseller change is submitted prior to the beginning of the 13th month of the 4.x Enrollment Form/Agreement.*
- Payment Option 4: Future recurring Maintenance billings under this Select 3.x Enrollment Form should be billed to the newreseller.

Select "Change of Channel Partner" (MSLI, LLC - Latin America). Refer to Chapter 11, Change of Channel Partner

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APPENDIX: SELECT "CHANGE OF CHANNEL PARTNER" (MSLI, LLC – LATIN AMERICA)

Dear Volume Licensing Administrator:

By this letter the customer hereby notifies MSLI, LLC that it is changing the Large Account Reseller identified in the 3.x/4.x agreement identified above. The new reseller's appointment shall commence upon MSLI, LLC's acceptance of this Change request, and will be confirmed with a revised Acceptance Letter to the new reseller, noting the effective date of the change.

License Confirmations for all Select Software Products copied **on or before** the Effective Date of the change shall be ordered by the customer from the terminated reseller. The customer agrees that it shall pay the terminated reseller for such License Confirmations, as well as all Maintenance or Upgrade Advantage and Upgrade Advantage Plus fees incurred prior to such date. For any Select Software Products copied and Maintenance or Upgrade Advantage and Upgrade Advantage Plus fees incurred **after** the Effective Date of the change, the customer shall order those License Confirmations from and pay those fees to the new reseller. Likewise, any purchase orders or True Up Reports that are required to be submitted under an Enterprise Agreement **on or before** the Effective Date of the change must be submitted to the terminated reseller, and any such purchase orders or True Up Reports that are required to be submitted under an Enterprise Agreement **after** the Effective Date of the change must be submitted to the new reseller.

The customer represents and warrants that it has made the appropriate arrangements with the terminated reseller with respect to termination. In addition, the customer has confirmed that the new reseller is approved by MSLI, LLC to offer Microsoft Select.

The customer requests that MSLI, LLC confirms acknowledgment of these circumstances by signing below.

The customer has obtained acknowledgment of the new reseller. By signing below, the new reseller acknowledges its appointment under the Select 3.x/4.x agreement identified above.

Sincerely,

Acknowledged by:

[CUSTOMER]

MSLI, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

E-Mail: _____

E-Mail: _____

APPENDIX: SELECT "CHANGE OF CHANNEL PARTNER" (MSLI, LLC – LATIN AMERICA)

Acknowledged by:

Acknowledged by:

[NEW RESELLER]

[LARGE ACCOUNT DISTRIBUTOR]
(if applicable)

Headquarters Address:

Headquarters Address:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

E-Mail: _____

E-Mail: _____