

Enterprise Purchase Agreement

Enrollment number
Microsoft to complete

This Purchase Agreement must be attached to a signature form and accompanied by an Enterprise Enrollment to be valid.

This Microsoft Enterprise Purchase Agreement (“Agreement”) is entered into between the Enrolled Affiliate and the Microsoft Sales Affiliate identified on the Program Signature Form. It establishes the terms under which Enrolled Affiliate will order Licenses for Products and Professional Services from the Microsoft Sales Affiliate. This Agreement will be effective as of the effective date of the Enrollment identified above (“Enrollment”) between the Enrolled Affiliate and the Microsoft Licensing Affiliate.

This Agreement consists of the terms and conditions in this document, any Customer Price Sheet that refers to this Agreement, and any other purchasing documents identified on the Program Signature Form signed by Enrolled Affiliate and attached to the Enrollment.

Enrolled Affiliate represents that it is the same entity that entered into the Enrollment.

Enrolled Affiliate

Name of Entity (must be legal entity name)* The City of Saint John.

Language preference. Choose the language for notices. English

Billing contact: This is the contact to which Microsoft Sales Affiliate will send invoices. The Billing contact may also be contacted regarding purchase order matters or other invoicing queries.

Name of entity* The City of Saint John.

Accounts payable contact name: First* SARAH **Last*** RANSON

Accounts payable contact email address* sarah.ranson@saintjohn.ca

Street address* 15 MARKET SQ

City* SAINT JOHN

Province* NB

Postal code* E2L 4L1

Country* Canada

Phone (506) 649-6047

Financing.* Is a purchase under this Agreement being financed through Microsoft Financing?

Yes, No

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

**Indicates required fields.*

Enrolled Affiliate will notify Microsoft Sales Affiliate in writing if any of the above information changes. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Purchase Agreement by Microsoft Sales Affiliate, its Affiliates, contractors and other parties that help administer this agreement. The personal information provided in connection with this agreement will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

1. Definitions.

Terms used in this Agreement but not otherwise defined will have the definition provided in the Enrollment. The following definitions also apply:

“Customer Price Sheet” means the written statement provided to Enrolled Affiliate that contains Enrolled Affiliate’s initial order and associated pricing.

“Microsoft Licensing Affiliate” means the Microsoft legal entity that enters into the Enrollment under which the Enrolled Affiliate is licensed to access and use Microsoft Products.

“Microsoft Sales Affiliate” refers to the Microsoft legal entity that enters into this Agreement.

2. Ordering and Payment.

- a. **Orders.** Enrolled Affiliate will order Microsoft Products and Professional Services from Microsoft Sales Affiliate as permitted or required under the Enrollment. Prices will be reflected on the Customer Price Sheet. Microsoft Sales Affiliate has no obligations with respect to an order until Microsoft Licensing Affiliate accepts it.
- b. **Setting prices.** Except for Online Services designated in the Product Terms as being exempt from fixed pricing, Enrolled Affiliate’s prices for each Product ordered will be fixed throughout the applicable initial or renewal Enrollment term, provided that Enrolled Affiliate qualifies for the same price level for the entire term. Price levels and prices are reestablished at the beginning of the renewal term.
- c. **Payment terms.** Microsoft Sales Affiliate will invoice Enrolled Affiliate for all Products and Professional Services ordered, and Enrolled Affiliate will pay the amount due to Microsoft Sales Affiliate according to the terms, payment methods and in the currency stated on Microsoft Sales Affiliate’s invoice and Customer Price Sheet.
- d. **Spread payment option.** For the initial or renewal order Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If spread payments are elected, unless indicated otherwise on the Customer Price Sheet, Microsoft Sales Affiliate will invoice Enrolled Affiliate in three equal annual installments. The first installment will be invoiced upon Microsoft Licensing Affiliate’s acceptance of the applicable initial or renewal order and remaining installments will be invoiced on each subsequent Enrollment anniversary date.
- e. **Mid-term orders.** Mid-term orders will be invoiced upon acceptance of each order. Enrolled Affiliate may elect to pay annually or upfront for Online Services ordered mid-term but must pay upfront for all other Licenses ordered mid-term.
- f. **Reserved Licenses.** Payment for a reservation order may be deferred until the next true-up order. Reserved Licenses will be invoiced retroactively to the month in which they were ordered. If Enrolled Affiliate fails to submit a true-up order or update statement in accordance with the terms of the Enrollment, Microsoft Sales Affiliate will invoice Enrolled Affiliate for all Reserved Licenses not previously ordered.
- g. **Subscription License reductions.** Invoices will be adjusted to reflect any reductions in Subscription Licenses (as described in the Enrollment) at the true-up order Enrollment anniversary and effective as of such date.
- h. **Online Services Extended Term.** For the first twelve months of an Extended Term, Online Services will be invoiced monthly at the then-current published price for Enrolled Affiliate’s price level as of the Enrollment Expiration Date plus a 3% administrative fee. As of the first day of the thirteenth month of the Extended Term, Online Services that continue until cancelled will be invoiced at the then-current published price for price level A plus a 3% administrative fee.
- i. **Taxes.** Amounts owed to Microsoft Sales Affiliate are exclusive of any taxes, unless specified on the invoice as tax inclusive. Enrolled Affiliate shall pay any applicable value added, goods and

services, sales, gross receipts, or other transaction taxes, fees, charges or surcharges or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Microsoft Sales Affiliate is permitted to collect from Enrolled Affiliate. Enrolled Affiliate shall be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay, including any taxes that arise on the distribution or provision of Products or Professional Services by Enrolled Affiliate to its Affiliates. Microsoft Sales Affiliate shall be responsible for payment of all taxes based on its net income, gross receipts taxes imposed in lieu of taxes on income or profits, and taxes on its property ownership.

If any taxes are required to be withheld on payments made to Microsoft Sales Affiliate, Enrolled Affiliate may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Enrolled Affiliate promptly provides Microsoft Sales Affiliate an official receipt for those withholdings and other documents reasonably requested to allow Microsoft Sales Affiliate to claim a foreign tax credit or refund. Enrolled Affiliate will ensure that any taxes withheld are minimized to the extent possible under applicable law.

3. Termination.

- a. **Term.** This Agreement has the same term as the Enrollment.
- b. **Termination.** Without limiting any other remedies it may have, either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach. A material breach of this Agreement will be construed as a material breach of the Enrollment. In the event of termination under this provision by the Microsoft Sales Affiliate, or if the Microsoft Licensing Affiliate terminates the Enrollment for cause, all amounts due under any unpaid invoices shall become due and payable immediately. For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Enrolled Affiliate will receive a credit for any amount paid in advance for the period after termination.
- c. **Effect of termination.** Enrolled Affiliate's options in the event of early termination or expiration of the Enrollment are described in the applicable sections of the Enrollment.

4. Confidentiality.

The parties will be bound by the provisions related to Confidentiality in the Master Agreement with respect to Confidential Information disclosed to each other in the course of their business relationship under this Agreement.

5. Warranties and Limitation of Liability.

All warranties, obligations to defend against third-party claims and limitations of liability set forth in the Master Agreement (as modified by any applicable country-specific provisions) shall also apply to claims under this Agreement. Microsoft Licensing Affiliate is solely responsible for claims relating to the performance of Products and Microsoft's defense of third-party claims (including claims of intellectual property infringement). **Microsoft Sales Affiliate is not liable for such claims and, to the maximum extent permitted by applicable law, expressly disclaims all express, implied and statutory warranties and liability for such claims, including, without limitation, warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.**

6. Miscellaneous.

The following provisions apply to this Agreement, notwithstanding anything to the contrary in the Master Agreement.

- a. Applicable Law.** The terms of this Agreement will be governed by the law of the jurisdiction where the Microsoft Sales Affiliate has its headquarters at the time of entering into this Agreement. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.
- b. Notices.** Notices, authorizations, and requests in connection with this Agreement must be sent by regular or overnight mail or express courier to the addresses and numbers listed in this Agreement. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier confirmation of delivery. Microsoft may provide information to Enrolled Affiliate about upcoming ordering deadlines, services and subscription information in electronic form, including by email to contacts provided by Enrolled Affiliate. Emails will be treated as delivered on the transmission date.
- c. Assignment.** This Agreement may not be assigned, sublicensed, or otherwise transferred by Enrolled Affiliate without the prior written consent of Microsoft Sales Affiliate; any attempt to do so without consent will be void. Microsoft Sales Affiliate may assign any of its rights under this Agreement, including, without limitation, the right to sue for amounts due and outstanding from Enrolled Affiliate, without the need for any further consent.
- d. Entire Agreement.** This Agreement is the parties' entire understanding with respect to this subject and merges and supersedes all prior Agreements, discussions, and understandings, express or implied, on this subject. Changes made to this Agreement after it is presented to Enrolled Affiliate for signature are non-binding unless expressly accepted by both parties. Any terms on Enrolled Affiliate's purchase order that are additional to or conflict with this Agreement are expressly rejected and not part of this Agreement.
- e. Order of precedence.** In the case of a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order, from highest to lowest priority: (1) this Purchase Agreement, (2) the Customer Price Sheet, (3) any other documents in this agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- f. Severability.** If any provision in this Agreement is held to be unenforceable, the balance of the agreement will remain in full force and effect.
- g. Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- h. Dispute resolution.** When bringing any action arising under this Agreement, the parties agree to the following exclusive venues:
- (i)** If Microsoft Sales Affiliate brings the action, the venue will be where Enrolled Affiliate has its headquarters.
 - (ii)** If Enrolled Affiliate brings the action against any Microsoft Affiliate located outside of Europe, the venue will be the state or federal courts in King County, State of Washington, U.S.A.
 - (iii)** If Enrolled Affiliate brings the action against a Microsoft Affiliate located in Europe, and not also against a Microsoft Affiliate located outside of Europe, the venue will be where such Microsoft Affiliate has its headquarters.

The parties consent to personal jurisdiction in the agreed venue. This choice of venue does not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.