

Microsoft Licensing, GP Document Summary Form

** This is for informational purposes only **

MSE#:

3-0000000742181

(MSLI
Tracking
Number)

Doc Type:

Amendments

Do not modify the formatting or spacing of this Form above this text

Subsidiary:

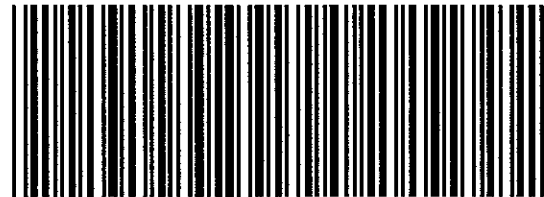
Country:

United States

Account Manager Name / Alias:

LAR/LAD/ESA:

SHI International



Program/Versio

Campus 3.4

(MSLI Scanning Code)

ACCOUNT: Regents of the University of California

Outsourcer Name:

Business Agreement Number:

Master Agreement Number: **01C33440**

Agreement Number:

Purchase Order Number:

21

Comments: SGN-000-dmills-e-0989

Campus and School Agreement
Amendment ID CTM-

000-dmills-e-0989

AMENDMENT TO CASA 3.4 (Agreement # 01C33440)
For Office 365 by and between Regents of the University of California (Institution) and
Microsoft

If an Enrolled Institution orders Office 365 Services, these terms and conditions set forth in this Amendment and Exhibits attached hereto (hereafter, the “UC Office 365 Amendment”) update the terms of the CASA identified above and/or an Enrollment for Enterprise Solutions (“EES”) under the CASA, as applicable.

I. Background: Institution and Microsoft desire to amend the CASA in order for Enrolled Institutions to purchase and/or otherwise receive Office 365 Services from Microsoft, in support of Institution’s educational mission and activities. This UC Office 365 Amendment sets out the terms and conditions governing Microsoft’s provision of these services to each Enrolled Institution, subject to the terms and conditions of this UC Amendment including but not limited to the time limitations of Section III.F, below. For an Enrolled Institution’s purchase of Online Services other than Office 365 Services, those other Online Services shall be governed by its Enrollment for Enterprise Solutions (and other related documents, as applicable) without the terms and conditions of this UC Office 365 Amendment.

II. Incorporation of Documents; Order of Governance

This document (UC Office 365 Amendment) is an Amendment to the Campus and School Agreement identified above and on the signature form (the “CASA”). Solely with regard to the Office 365 Services, in the event of a conflict among the terms of the documents comprising this UC Office 365 Amendment, the following order of governance will apply: (a) this UC Office 365 Amendment including Exhibits referenced below; (b) each applicable Enrollment for Education Solutions, (the “EES”), and if Institution is a “Covered Entity” as defined under HIPAA and if submitted with this Office 365 Amendment, as amended by Enterprise Enrollment Amendment ID B116; and (c) the Campus and School Agreement identified on the signature form (the “CASA”), as amended hereby.

Remainder of page intentionally left blank.

III. Terms and Conditions:

1. Term, Termination and Time Restrictions:

Terms and conditions related to the term and termination of each EES, and of the CASA, are set forth in Section 18 of the CASA. As noted in Section 18.b. of CASA, the termination of the CASA does not result in termination of any existing Enrollment, which Enrollment will continue in accordance with its terms, but will terminate either party's ability to enter into new Enrollments.

The terms and conditions of this UC Office 365 Amendment shall apply solely to individual EES for which the applicable Enrolled Institution first purchases one or more subscription Licenses for Office 365 Services on order before the later of (i) June 30, 2012; or (ii) ninety (90) days after general availability for Office 365 for Education (the "Amendment Availability End Date"). Each EES for which the applicable first purchase of Office 365 Services occurs on or before such Amendment Availability End Date shall remain subject to the terms and conditions of the UC Office 365 Amendment until such EES expires or is otherwise terminated early pursuant to the terms of the CASA. Following the Amendment Availability End Date, Microsoft may, at its sole option, either (i) extend the Amendment Availability End Date; (ii) propose alternative amendment terms for EES not covered by these terms and conditions. If Microsoft chooses (ii), it will negotiate such alternative terms in good faith with Institution.

2. Definitions:

- a. "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
- b. "End User" means an individual authorized by an Enrolled Institution to access and use the Office 365 Services provided by Microsoft under the applicable EES and this UC Office 365 Amendment.
- c. "Enrolled Institution" means a campus, medical center or other sub entity of Institution which executes an EES under the CASA.
- d. "Institution" means the Regents of the University of California, a constitutionally created corporation. This UC Office 365 Amendment will apply to any Enrolled Institution which purchases Office 365 Services under its EES.
- e. "Institution Data" means all data, including but not limited to all text, sound, image, or video files that are provided to Microsoft by, or on behalf of, an Enrolled Institution or any End User through Enrolled Institution's or any End User's use of the Office 365 Services. Institution Data may be referred to as Customer Data in the Product Use Rights. Institution Data may also include Personal Data.
- f. "Office 365 Services" consist solely of the following Online Services: Exchange Online; SharePoint Online; Lync Online; and any "Office 365" suites of Online Services composed of those Online Services.

- g. "Online Services" means the Microsoft-hosted services identified in the Online Services section of the Product List. Online Services include, but are not limited to, Office 365 Services.
 - h. "Personal Data" includes but is not limited to: personal identifiers such as name, address, phone number, date of birth, Social Security Number, and student or personnel identification number; Protected Health Information (PHI) as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103 (HIPAA); personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g (FERPA); driver's license number; and other state- or federal-identification numbers such as passport, visa or state identity card numbers.
 - i. "Product" means all software, Online Services and other web-based services, including pre-release or beta versions, identified on the Product List.
 - j. "Security Incident" is defined in Section 9.a. of this UC Office 365 Amendment.
 - k. "Service Descriptions" means Microsoft's published description of the Office 365 Services which may be updated from time to time by Microsoft. As of the date this UC Office 365 Amendment was executed by the parties, Office 365 Services Descriptions are posted to <http://www.microsoft.com/download/en/details.aspx?id=13602>.
 - l. "Service Level Agreement" means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for Office 365 Services.
 - m. "Tenant" means the environment established by Microsoft on its multi-tenant servers from which Office 365 Services are hosted. Institution Data in each Tenant is logically isolated from Institution Data (also known as Customer Data) in other Tenants, and each Tenant is managed separately by different Tenant Administrators. Two Tenants may not share the same administrator ID, and may not share data objects such as address lists or SharePoint Online sites. More information about Tenants may be found on the applicable Services Descriptions posted to the following or a successor site Microsoft identifies: <http://www.microsoft.com/download/en/details.aspx?id=13602>.
3. Service Entry Plan for Office 365 Services:
 Microsoft and each Enrolled Institution that purchases Office 365 Services will jointly review the Office 365 Services deployment options, which consist of self-service migrations, partner-led migrations, or Microsoft Premier Deployment services. Should Enrolled Institution choose to select Microsoft Premier Deployment services ("Microsoft Deployment Services"), each such Enrolled Institution understands that the Microsoft Deployment Services will be provisioned under a separate Microsoft services agreement, the terms and conditions of which will be negotiated separately between Enrolled Institution (or Institution on its behalf) and the responsible Microsoft services business entity. The Microsoft services business entity will review the Office 365 Migration Service Descriptions and Standard Deployment Rate card, as well as any additional remediation or deployment readiness

work that needs to be completed in order for Enrolled Institution to access and use the Office 365 Services.

4. Rights and License in and to Institution Data:

The parties agree that as between them, all rights including all intellectual property rights in and to Institution Data shall remain the exclusive property of Institution (and/or the applicable Enrolled Institution), and Microsoft has a limited, nonexclusive license to use the Institution Data as provided in this UC Office 365 Amendment solely for the purpose of performing its obligations hereunder. This UC Office 365 Amendment does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in this UC Office 365 Amendment.

5. Data Privacy:

- a. Microsoft acknowledges that for the purposes of this UC Office 365 Amendment it will be designated as a "school official" with "legitimate educational interests" in the Institution Data, as those terms have been defined under the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) (FERPA) and its implementing regulations, and Microsoft agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Microsoft will use Institution Data only for the purpose of fulfilling its duties under this UC Office 365 Amendment, which includes providing and improving the Office 365 Services, for each applicable Enrolled Institution's and its End User's benefit, and will not monitor or share such data with or disclose it to any third party except as provided for in this UC Office 365 Amendment, or as required by law (subject to the terms and conditions of Section 8), or authorized in writing by Enrolled Institution.
- b. For the Office 365 Services only, Microsoft agrees to locate all Exchange, SharePoint and Lync servers that will be accessed by End Users in production and disaster recovery datacenters only in the continental United States provided that the Office 365 ID used to set up the administrative account for the Office 365 Services for each applicable enrollment is associated with an address in the United States. Microsoft's commitment under this Section does not apply to the anti-spam and antivirus services and technical support services which may be provided from other service locations outside of the United States for which Microsoft is responsible.
- c. Microsoft will provide access to Institution Data only to those Microsoft employees and subcontractors who need to access the data to fulfill Microsoft's obligations under this UC Office 365 Amendment. Microsoft will ensure that its employees and subcontractors who perform work under this UC Office 365 Amendment have read, understood, and received appropriate instruction as to how to protect data consistent with the provisions of this UC Office 365 Amendment. Microsoft performs the following background checks on all US personnel who have potential to access Institution Data. As of the Enrollment Effective Date, background checks will be performed in accordance with the Fair Credit Reporting Act and will consist of Social Security Number-trace, seven (7) year

felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, Office of Foreign Assets Control List (OFAC) check, Bureau of Industry and Security List (BIS) check and Office of Defense Trade Controls Debarred Persons List (DDTC) check.

6. Data Security and Integrity:

- a. All facilities used to store and process Institution Data shall employ commercially reasonable and appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures shall be no less protective than those used to secure Microsoft's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- b. Microsoft shall use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Office 365 Services under this UC Office 365 Amendment. Microsoft shall update its tools and technologies during the course of this UC Office 365 Amendment as industry standards change and updated tools and technologies become available.
- c. Microsoft shall configure the Exchange Online Services to filter spam while permitting communications from third-party Internet Protocol addresses identified as legitimate. Microsoft may access or disclose Institution Data, in accordance with Microsoft security policies, with industry recognized anti-spam, virus and malware companies and groups (including ISPs and providers of antivirus technologies), including the content of End User communications, in order to take action or pursue other remedies against suspected purveyors of spam, viruses, malware, phishing or other attacks that have in any manner disrupted or diminished, or may in the future in any manner disrupt or diminish, Office 365 Services. Disclosures under this Section 6.c. may include the attacker's IP addresses, mail message header information, user name, email address, email body and attachments, including any viruses. The parties acknowledge that only authorized Microsoft personnel will access emails of End Users as expressly provided for in this UC Office 365 Amendment.
- d. Microsoft has established, will during the term maintain, and, with respect to Institution Data, shall comply with a data security policy applicable to the Office 365 Services that is in alignment with the ISO/IEC 27000 series of standards, the ISO/IEC 27002 code of best practices for information security management, and ISO 27001 standards for the establishment, implementation, control, and improvement of the Information Security Management System ("Microsoft Online Information Security Policy"), which will be Microsoft Trade Secret/Confidential Information. On a confidential need-to-know basis, Microsoft will provide access to the Microsoft Online Information Security Policy to Institution and Enrolled Institution employees and consultants, along with other information reasonably requested by Institution or Enrolled Institution regarding

Microsoft's security practices and policies. Institution and each Enrolled Institution is solely responsible for reviewing the Microsoft Online Information Security Policy, making an independent determination as to whether the Microsoft Online Information Security Policy meets Institution's or Enrolled Institution's requirements, and for ensuring that Institution's or Enrolled Institution's employees and contractors follow the guidelines they are provided by Institution or Enrolled Institution regarding data.

- e. Microsoft will, subject to this Section 6.e, audit the security of the data centers from which Microsoft will provide the Office 365 Services to Enrolled Institution(s) ("Service Locations"). This audit: (1) will be performed at least annually; (2) will be performed according to appropriate industry security standards such as SSAE 16 as elected by Microsoft ; (3) may be performed by third party security professionals at Microsoft's election and expense; (4) will result in the generation of an audit report ("Microsoft Audit Report"), which will be Microsoft Confidential Information; and (5) may be performed for other purposes in addition to satisfying this Section (e.g., as part of Microsoft's regular internal security procedures or to satisfy other contractual obligations). The Microsoft Audit Report will address the control procedures used by Microsoft at the Service Location(s), including specifically an assessment of whether (A) the control procedures were suitably designed to provide reasonable assurance that the stated internal control objectives would be achieved if the procedures operated as designed, and (B) the control procedures operated effectively at all times during the reporting period.

Upon Institution's or an Enrolled Institution's advance written request, no more frequently than once per 12-month period, Microsoft will provide access to Institution or such Enrolled Institution on a confidential need-to-know basis a redacted version of the Microsoft Audit Report so that Institution or Enrolled Institution can reasonably verify Microsoft's compliance with its security obligations under this UC Office 365 Amendment. Microsoft may remove any information from the Microsoft Audit Report or other audit report that may compromise the security of Microsoft's information technology environment or the confidentiality of any third-party Confidential Information, provided that such removal does not prevent Institution or Enrolled Institution from understanding the substance of the Microsoft Audit Report or other audit report.

Microsoft will make good faith, commercially reasonable efforts to remediate (1) any errors identified in a Microsoft Audit Report that could reasonably be expected to have an adverse impact on Enrolled Institution(s)' use of the Office 365 Services, and (2) material control deficiencies identified in the Microsoft Audit Report.

Remainder of page intentionally left blank.

7. Data Integrity:

Microsoft will take commercially reasonable measures consistent with the Microsoft Online Information Security Policy, to protect Institution Data against deterioration or degradation of data quality and authenticity.

8. Response to Legal Orders, Demands or Requests for Data:

- a. Upon receipt of valid legal process (the "Legal Request"), Microsoft will attempt to redirect the requesting third party to the applicable Enrolled Institution to acquire any Institution Data and/or request that the third party notify Institution of its Legal Request. If Microsoft's redirecting efforts are unsuccessful, and provided Microsoft is not prohibited by law from doing so, Microsoft will provide commercially reasonable notice to the Enrolled Institution of the Legal Request, prior to disclosure of any Institution Data, which would include to the extent permitted by law a copy of the Legal Request received by Microsoft from the third party. Microsoft will thereafter respond to the Legal Request in the time permitted unless Enrolled Institution has taken appropriate legal steps (i.e., Motion to Quash or Motion for a Protective Order) to stop or limit Microsoft's response.
- b. Institution will provide required notice to End Users (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, the student's parent).
- c. With respect to any legal process served on an Enrolled Institution for which the Enrolled Institution intends to respond, Enrolled Institution has access to and may extract for itself Institution Data. If Enrolled Institution is unable to access Institution Data using the tools and documentation provided by Microsoft, then, upon request, Microsoft shall provide commercially reasonable assistance to enable the Enrolled Institution to obtain for itself the Institution Data.

Microsoft's Office 365 Support Service Description provides no-cost support for IT professionals/Admins. As of the date this UC Office 365 Amendment was executed by the parties, a link to the Office 365 Service Descriptions may be found at <http://www.microsoft.com/download/en/details.aspx?id=13602>. Additional support, if any, would be provided for a fee to the Institution through a separate agreement.

Remainder of page intentionally left blank.

9. Security Incident Response:

The following terms and conditions apply solely to the Office 365 Services purchased under this UC Office 365 Amendment:

- a. Upon becoming aware of any unlawful access to any Institution Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities reasonably expected to result in loss, disclosure, or alteration of Institution Data (each a "Security Incident"), Microsoft will use commercially reasonable efforts: (1) promptly notify the applicable Enrolled Institution of the Security Incident; (2) investigate the Security Incident and provide Enrolled Institution with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.
- b. Institution (on behalf of each Enrolled Institution) agrees that:
 - (1) An unsuccessful Security Incident will not be subject to the terms and conditions of this Section 9, "Security Incident Response". An unsuccessful Security Incident is one that results in no unauthorized access to Institution Data or to any Microsoft equipment or facilities storing Institution Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents; and
 - (2) Microsoft's obligation to report or respond to a Security Incident under this Section 9 "Security Incident Response" is not and will not be construed as an acknowledgment by Microsoft of any fault or liability with respect to the Security Incident.
- c. Notification(s) of Security Incidents, if any, will be delivered to one or more of each affected Enrolled Institution's Tenant administrators by any means Microsoft selects that will provide prompt notice to Institution, including via email. It is each Enrolled Institution's sole responsibility to ensure that its administrators maintain accurate contact information on the Online Services Portal at all times.

10. Data Retention and Disposal:

- a. Microsoft will use commercially reasonable efforts to retain data in an End User's account, including attachments, until the Enrolled Institution or End User deletes it or Microsoft deletes it upon termination or expiration of the Office 365 Services as provided for in Section 11 below.

- b. The Office 365 Services provide high availability of the Institution Data without the need for back-up of the data on storage media, except as provided for in Section 10.d. below for optional archiving services.
- c. Microsoft will provide Enrolled Institution on an ongoing basis with access to standard reports generally available to all customers on the Office 365 Services and Enrolled Institution may copy and retain those reports as Enrolled Institution may deem reasonably necessary.
- d. Optional paid email archiving services (available only when applicable End Users are licensed for an Exchange (e.g. Exchange Plan 2, or an Office 365 suite containing it) which contains Exchange Online advanced Archiving, as described in the Exchange Online Service Description) will enable Enrolled Institution to immediately place a "hold" on the destruction of the applicable Institution Data that has been archived for the applicable licensed End User(s).

11. Data Transfer Upon Termination or Expiration:

- a. Upon expiration or termination of Office 365 Services, Institution must contact Microsoft and inform Microsoft whether to:
 - (1) disable Institution's account and then delete the Institution Data; or
 - (2) retain Institution Data in a limited function account for at least 90 days after expiration or termination of the Office 365 Services (the "Retention Period") so that Enrolled Institution may extract the data. Enrolled Institution's tenant Administrator(s) will, during the Retention Period, have access to Enrolled Institution's Institution Data.
- b. If Enrolled Institution indicates 11.a.1. above, then Enrolled Institution will not be able to extract the Institution Data from its account. If Enrolled Institution indicates 11.a.2. above, Institution's Reseller will reimburse Microsoft (and Reseller will invoice Enrolled Institution) for any data retention costs applicable during the Retention Period. The confidential amount Microsoft invoices Reseller for such costs shall not to exceed the then-current standard CASA net list price Microsoft charges US Resellers under CASA for the applicable Office 365 Services. Enrolled Institution's actual price will be determined by separate agreement between Reseller and Enrolled Institution. If Enrolled Institution does not indicate 11.a.1. or 11.a.2. above, Microsoft will retain the Institution Data in accordance with Section 11.a.2. above.
- c. Following the expiration of the Retention Period, Microsoft will disable Enrolled Institution's account and then delete the Institution Data .
- d. No Liability for Deletion of Institution Data. Institution agrees that, other than as described in this UC Office 365 Amendment, Microsoft has no obligation to

continue to hold, export or return the Institution Data. Institution agrees that Microsoft has no liability whatsoever for deletion of the Institution Data pursuant to these terms.

12. Service Levels; Interruptions in Service; Suspension and Termination of Service; Changes to Service:

- a. Microsoft provides a Service Level Agreement for Office 365. As of the Enrollment Effective Date, the location of the Service Level Agreement is set forth in the Product Use Rights. See <http://www.microsoft.com/licensing/contracts>.

Neither party will be liable to the other for any failure or delay in performance under this UC Office 365 Amendment to the extent said failures or delays are proximately caused by forces beyond that party's reasonable control, provided that the party resumes performance as soon as it is reasonably able to do so.

- b. Office 365 Service Updates. Microsoft may modify the functionality or features or release a new version of the Office 365 Services and related software from time to time. After an update, some previously available functionality or features may change or no longer be available. If Microsoft updates the Office 365 Services or software and an Enrolled Institution does not use the updated Office 365 Service or software, some features may not be available to Enrolled Institution and Enrolled Institution's use of the Office 365 Services and software may be interrupted. If Institution or an Enrolled Institution objects to a planned new feature or retired feature within 30 days of the date it is first identified in a Microsoft services roadmap communication (e.g. discussions with the Microsoft account management team and Institution or an Enrolled Institution), then Microsoft will discuss the objections with Institution or the Enrolled Institution and consider them in good faith. Microsoft reserves the right to create and offer any new feature, in order to address customer demand, remain competitive, or advance innovation in its Office 365 Services offerings.
- c. Microsoft will use commercially reasonable efforts to notify Enrolled Institutions of scheduled downtime in the provision of the Office 365 Services for maintenance or upgrades. As of the Enrollment Effective Date, Microsoft will notify Enrolled Institutions using the Online Services Service Health Dashboard .
- d. Enrolled Institution may suspend or terminate an End User's access to the Office 365 Services in accordance with Institution's or Enrolled Institution's policies. Enrolled Institution will assume sole responsibility for any claims made by End User regarding Institution's suspension/termination or directive to suspend/terminate such service.

Microsoft may suspend the Office 365 Services in whole or in part and without notice: (1) if Microsoft believes that Enrolled Institution's use of the Office 365

Services represents a direct or indirect threat to Microsoft's network function or integrity or anyone else's use of the Office 365 Services; (2) if reasonably necessary to prevent unauthorized access to Institution Data; (3) to the extent necessary to comply with legal requirements. If Microsoft suspends the services without notice, Microsoft will provide the reason for such suspension if Institution requests.

Subject to the CASA provisions pertaining to cure of breach, if Microsoft believes Institution violated the terms of the CASA, EES or its UC Office 365 Amendment, Microsoft may suspend the Office 365 Services, in whole or in part, after providing Institution notice via email or other commercially reasonable mechanism. Any suspension of Office 365 Services shall apply to the minimum necessary portion of the Office 365 Services and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension.

13. End-user support. Institution or an Enrolled Institution may request the then current Support Service Description that describes the initial training and ongoing technical support for the Office 365 Services available to Enrolled Institution and End Users. Institution acknowledges and agrees that Institution or the applicable Enrolled Institution will provide front-line support to its End Users for the Office 365 Services.
14. Institutional Branding: Microsoft will provide for Institution branding of SharePoint Online, as further specified in the applicable SharePoint Online Service Description, in the same manner which it is then available for all Office 365 services customers. Microsoft may not use Institution's name or logo in its marketing and promotional materials, including listing Institution as a client, without Institution's prior written approval.
15. Compliance with Applicable Laws and Institution Policies. Microsoft will comply with all laws, including data protection and data privacy laws, that are generally applicable to the Office 365 Services of Microsoft as an IT service provider under this UC Office 365 Amendment. Microsoft is not responsible for laws applicable to Institution or Institution's industry and not generally applicable to IT service providers.

Institution acknowledges and agrees that a separate services agreement, and not this UC Office 365 Amendment, will govern services (if any) provided to Institution for deployment, consulting and any other services related to Office 365 Services ordered pursuant to this UC Office 365 Amendment that are not expressly provided with an Office 365 Service license pursuant to the terms of this UC Office 365 Amendment and the underlying Enrollment and CASA (collectively, "Other Related Services"). An example of such Other Related Services is discussed in Section 3, "Service Entry Plan for Office 365 Services."

If an Enrolled Institution requires Microsoft personnel to execute standard document(s) prior to gaining access to Enrolled Institution systems and/or prior to gaining access to Enrolled Institution's facilities in order to perform Other Related Services (each such document a "Standard Access Agreement"), as a part of

Institution's and/or Enrolled Institution's standard policies and procedures regarding contractors working onsite or contractors with logon accounts to Enrolled Institution's network, any such Standard Access Agreement will be of no force or effect whatsoever as to Microsoft or Microsoft personnel unless the Enrolled Institution notifies Microsoft of such requirement prior to executing either this UC Office 365 Amendment and/or the applicable services agreement.

Microsoft makes no representation in this UC Office 365 Amendment that it will accept the terms and conditions of an Enrolled Institution's Standard Access Agreement(s). In the event that Institution and Microsoft mutually agree upon the terms and conditions of a Standard Access Agreement, the following terms will apply irrespective of those terms:

- a. Microsoft will be responsible for Microsoft personnel's compliance with the Standard Access Agreement;
- b. Institution and the applicable Enrolled Institution(s) shall have no recourse against Microsoft personnel individually in the event of a breach of the Standard Access Agreement; and
- c. in the event of a conflict between the terms of the Standard Access Agreement and the terms of this UC Office 365 Amendment, the Enrollment associated herewith, or the services agreement between the parties (each, a "Microsoft Agreement"), the terms of the applicable Microsoft Agreement(s) shall prevail over the terms of the Standard Access Agreement; and
- d. Once executed by the parties, a Standard Access Agreement may not be modified without mutual consent of both parties.

16. Warranties, Insurance and Liability:

- a. Microsoft warrants that the Office 365 Services will perform in accordance with the applicable Service Level Agreement. This limited warranty is for the duration of Institution's use of the Office 365 Services, subject to the notice requirements in the applicable Service Level Agreement.

If Microsoft fails to meet this limited warranty and an Enrolled Institution notifies Microsoft within the warranty period, then Microsoft will provide the remedies identified in the Service Level Agreement for the affected Office 365 Services. These are Enrolled Institution's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

This limited warranty is subject to the following limitations:

1. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;

2. the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with the UC Office 365 Amendment, Agreement (CASA) and/or Enrollment (EES), as applicable, or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
3. the limited warranty does not apply to components of Products that Institution is permitted to redistribute ;
4. the limited warranty does not apply to free, trial, pre-release, or beta products; and
5. the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.

OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

- b. Solely with regard to this Section 16.b, "Faculty Office 365 Suite License" means a license provided pursuant to a paid license, and assigned solely for use by a member of Institution's faculty or staff, for any of the following Office 365 license types: (i) Office 365 Plan A1 (or E1); (ii) Office 365 Plan A2 (or E2); (iii) Office 365 Plan A3 (or E3); or (iv) Office 365 Plan A4 (or E4).

To the extent permitted by applicable law, the liability of each party, its Affiliates, and its contractors arising under the UC Office 365 Amendment is limited to direct damages up to the following amounts:

- (1) Solely for Office 365 Services for which a fee is charged, including but not limited to Faculty Office 365 Suite Licenses, the limit of liability will be calculated as the amount the affected Enrolled Institution was required to pay for the Office 365 Service giving rise to that liability during the prior 12 months;
- (2) Solely for Office 365 Services provided free of charge (hereafter, "Free Office 365 Licenses," including but not limited to certain Student licenses), the limit of liability will be calculated based upon the number of Faculty Office 365 Suite Licenses assigned to the affected Enrolled Institution's faculty and staff, as follows:

- If Enrolled Institution has less than 150 assigned Faculty Office 365 Suite Licenses, the limitation of liability with respect to Free Office 365 Licenses shall be \$5,000.00;
- If Enrolled Institution has between 150 and 4,999 assigned Faculty Office 365 Suite Licenses, the limitation of liability with respect to Free Office 365 Licenses shall be \$25,000.00;
- If Enrolled Institution has between 5,000 and 9,999 assigned Faculty Office 365 Suite Licenses, the limitation of liability with respect to Free Office 365 Licenses shall be \$50,000.00;
- If Enrolled Institution has between 10,000 and 14,999 assigned Faculty Office 365 Suite Licenses, the limitation of liability with respect to Free Office 365 Licenses shall be \$75,000.00; and
- If Enrolled Institution has 15,000 or more assigned Faculty Office 365 Suite Licenses, the limitation of liability with respect to Free Office 365 Licenses shall be \$100,000.00.

These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

1. Microsoft's obligations under Section 14 of the CASA titled "Defense of Infringement" or Institution's (and its enrolled Institutions') obligations under Section 17 "Institution's agreement to protect" of this UC Office 365 Amendment;
2. liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness"). For purposes of clarity, this section applies to fines and penalties that may be assessed by government authorities solely due to Microsoft's gross negligence or willful misconduct;
3. liabilities arising out of any breach by either party of its obligations under Section 18 "Confidentiality" of this UC Office 365 Amendment, except that Microsoft's liability arising out of or in relation to Institution Data shall in all cases be limited to the amount Institution paid for the Office 365 Service giving rise to that liability during the prior 12 months (plus, if applicable, the additional dollar amounts provided above in this Section 16.b for free Office 365 Licenses, code or other Products giving rise to that liability that were provided free of charge);
4. liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and

5. violation by either party of the other party's intellectual property rights.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS UC OFFICE 365 AMENDMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO INSTITUTION DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR MICROSOFT'S OBLIGATIONS IN THE SECTION 14 OF THE CASA AGREEMENT TITLED "DEFENSE OF INFRINGEMENT OR MISAPPROPRIATION CLAIMS" OR INSTITUTION'S OBLIGATIONS IN THE SECTION 17 OF THIS UC OFFICE 365 AMENDMENT TITLED "INSTITUTION'S AGREEMENT TO PROTECT."

- c. Institution and the applicable Enrolled Institutions are solely responsible for determining the suitability of the Office 365 Services for use for Enrolled Institution's purposes, and for compliance with any legal, regulatory and/or other requirements applicable to Institution and the Enrolled Institutions. MICROSOFT AND ITS SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE SUITABILITY OF THE OFFICE 365 SERVICES FOR USE FOR INSTITUTION'S AND ENROLLED INSTITUTIONS' PURPOSES, OR THE OFFICE 365 SERVICES COMPLIANCE WITH ANY LEGAL, REGULATORY AND/OR OTHER REQUIREMENTS APPLICABLE TO INSTITUTION AND ENROLLED INSTITUTIONS, EXCEPT AS OTHERWISE PROVIDED HEREIN. Institution and Enrolled Institutions shall not extend any warranties or incur any obligations on behalf of Microsoft to End Users or any other third party.

17. Institution's agreement to protect. To the extent permitted by the Regents of the University of California Standing Order 100.4 (dd) (9), the parties agree that Institution will be responsible for any claims and damages made by an unaffiliated third party against Microsoft that:

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

- b. arise from Institution's violation of the terms of this UC Office 365 Amendment. Microsoft assumes no liability for any claims that may arise due to an End User's violation of the terms of this UC Office 365 Amendment.

To the extent authorized under the laws of the State of California, Institution must pay the amount of any resulting adverse final judgment (or settlement to which Institution consents). This section provides Microsoft's exclusive remedy for these claims.

Microsoft must give prompt written notice of such a claim subject to this section to Institution and must give sole control of the defense or settlement of such claim to Institution. Microsoft will give assistance to Institution as is reasonably necessary to defend any such claim. To the extent authorized under the laws of the State of California, Institution will reimburse Microsoft for reasonable out of pocket expenses that it incurs in providing assistance. Nothing contained herein shall be interpreted as an express or implied waiver of Institution's sovereign immunity.

Institution shall use reasonable efforts to (i) ensure that student End Users are notified of the terms for acceptable use of the computing and communication resources provided to student End Users by Institution including use of the Office 365 Services; and (ii) within a commercially reasonable amount of time upon becoming aware of any unauthorized use of the Office 365 Services, inform Microsoft and take appropriate steps to ensure that such activity ceases and to prevent any recurrence. Institution confirms that its acceptable use policy, including student conduct codes and training, inform End Users to respect copyrights and other relevant legal responsibilities in their use of Institution computing, communication, and other web resources, including the Office 365 Services.

In the event of any unauthorized use of the Office 365 Services, and in addition to the suspension and termination rights and obligations in Section 12.d. of this UC Office 365 Amendment, Institution shall not be liable for unauthorized use of the Office 365 Services by any student End User provided that the Institution did not assist in or encourage such unauthorized use or permit such unauthorized use to continue after having actual notice thereof.

18. Confidentiality:

- a. **What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that:
 - (1) are designated in writing as "confidential";
 - (2) a reasonable person knows or reasonably should understand to be confidential; or
 - (3) includes non-public information regarding either party's products or customers, marketing and promotions, or the negotiated terms of Microsoft agreements, except for information that is required to be disclosed under the California Public Records Act.

b. What is not included. The following types of information, however marked, are not Confidential Information. Information that:

- (1) is, or becomes, publicly available without a breach of this UC Office 365 Amendment;
- (2) was lawfully known to the receiver of the information without an obligation to keep it confidential;
- (3) is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
- (4) is independently developed; or
- (5) is a comment or suggestion one party volunteers about the other's business, products or services.

c. Treatment of Confidential Information.

(1) **In general.** Subject to the other terms of this UC Office 365 Amendment, CASA and applicable EES, each party agrees:

- it will not disclose the other's Confidential Information to third parties; and
- it will use and disclose the other's Confidential Information only for purposes of the parties' business relationship with each other.

(2) **Security precautions.** Subject to the other terms of this UC Office 365 Amendment, CASA and applicable EES, each party agrees:

- to take reasonable steps to protect the other's Confidential Information -- these steps must be at least as protective as those the party takes to protect its own Confidential Information;
- to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and
- to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

(3) **Sharing Confidential Information with Affiliates and representatives.**

- A "Representative" is an employee, contractor, advisor, or consultant of one of the parties or of one of the parties' Affiliates.
- Each party may disclose the other's confidential information to its Representatives (who may then disclose that Confidential Information to other of that party's Representatives) only if those Representatives have a need to know about it for purposes of the parties' business relationship with each other. Before doing so, each party must:
 - 1) ensure that Affiliates and Representatives are required to protect the Confidential Information on terms consistent with this UC Office 365 Amendment, CASA and applicable EES; and
 - 2) accept responsibility for each Representative's use of Confidential Information.
- Neither party is required to restrict work assignments of Representatives who have had access to Confidential Information. Neither party can control the incoming information the other will disclose to it in the course of working together, or what that party's Representatives will remember, even without notes or other aids. Each party agrees that use of information in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this UC Office 365 Amendment or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

- (4) **Disclosing Confidential Information if required to by law.** Each party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, each party must seek the highest level of protection available and, unless legally prohibited from doing so, give the other enough prior notice to provide a reasonable chance to seek a protective order.
- d. **Length of Confidential Information obligations.** Except as permitted above, neither party will use or disclose the other's Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period or the Product Use Rights provide a more specific requirement.
- e. **Exception for Public Entity.** Because Institution is a public entity, Microsoft acknowledges and agrees that with respect to a disclosure by Institution or an Enrolled Institution and to the extent permitted by applicable law, the confidentiality terms are subject to the public records laws applicable to Institution.

19. Intentionally left blank.

20. Headings: Headings used herein are for convenience only and shall not have any separate legal effect.

21. Governing Law and Jurisdiction: This UC Office 365 Amendment and the rights and obligations of the parties hereunder shall be governed by the law of the State of California, without reference to choice of law principles. Any disputes arising under this UC Office 365 Amendment may be brought only in courts of competent jurisdiction in Alameda County, California, following good-faith efforts by the parties to negotiate a resolution; and Institution (on behalf of each Enrolled Institution) and Microsoft hereby submits to the sole and exclusive jurisdiction of such courts.

22. No Drafting Presumption: The parties agree that the terms of this UC Office 365 Amendment were mutually negotiated and shall not be construed either in favor or against either of them by virtue of the extent of their involvement in preparing this UC Office 365 Amendment.

23. Assignment and Subcontracting: See Section 19.h. of the CASA for assignments. Microsoft agrees that it shall be responsible for any of its vendors' or subcontractors' performance of obligations under this UC Office 365 Amendment and responsible for any breach by such parties.

24. Notices: See Section 19.a. of CASA ("Contact Information").

25. Counterparts: This UC Office 365 Amendment may be executed in any number of counterparts, including facsimile, PDF, and other electronic copies, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement between the parties.

26. Relationship between parties: The Parties intend to create an independent contractor relationship and nothing contained in this UC Office 365 Amendment shall be construed to make either Institution or Microsoft partners, joint venturers, principals, agents or employees of the other. No officer, director, employee, affiliate, agent or subcontractor retained by Microsoft to perform work on Institution's behalf under this UC Office 365 Amendment shall be deemed to be an employee or agent of Institution. Neither Party shall have any right, power or authority, express or implied, to bind the other.
27. Severability and Waivers: See Sections 19.b. and c. of CASA.
28. Section Reserved
29. Survival of Terms: See Section 19.i. of CASA.
30. Open Source License restrictions: Certain third party license terms require that computer code be generally (a) disclosed in source code form to third parties; (b) licensed to third parties for the purpose of making derivative works; or (c) redistributable to third parties at no charge (collectively, "Open Source License Terms"). Neither party may use, incorporate, modify, distribute, provide access to, or combine the computer code of the other with any other computer code or intellectual property (collectively, "Provide") in a manner that would subject the other's computer code to Open Source License Terms. Microsoft is not responsible for Institution's or an Enrolled Institution's upload, use or distribution of Institution's or such Enrolled Institutions' code from the Office 365 Services. Institution or an Enrolled Institution may upload code to an Office 365 Service and allow third parties access to use or download Institution's or Enrolled Institution's code on the Office 365 Services, provided that (1) such use is not restricted by a license agreement or the Product Use Rights and (2) any Open Source License Terms apply solely to Institution or Enrolled Institution and its uploaded code, and not to any code or Products provided by Microsoft. Each party warrants that it will not Provide (as defined above) the other party with, or give third parties access through the Office 365 Services to, computer code that is governed by Open Source License Terms, except as described above.
31. Applicability of UC Office 365 Amendment: This UC Office 365 Amendment applies only to an applicable Enrolled Institution's purchase and use of Office 365 Services. Services (e.g., consulting or professional services, i.e. "Microsoft Deployment Services" described in Section 3, above) and Products other than Office 365 Services remain subject to the terms of any definitive Microsoft services agreement, the CASA and/or the EES, as applicable, and any terms referenced therein. In the case of any conflict between this UC Office 365 Amendment and the terms and conditions of the CASA and/or EES that are not expressly resolved by their terms, this UC Office 365 Amendment controls with respect to the Office 365 Services.

32. Section number reserved.

33. GLB. Institution represents that it is a financial Institution subject to the Gramm-Leach-Bliley Act, 15 U.S.C. sections 6801-6809 and its implementing regulations (“GLB”). Without representing that it is subject to GLB, Microsoft understands that it may have access under this UC Office 365 Amendment to Institution financial information and other nonpublic personal information protected thereby. To assist Institution in meeting Institution’s GLB obligations, Microsoft will implement, maintain, and use appropriate administrative, technical and physical security measures to protect the confidentiality and integrity of all electronically maintained or transmitted Institution Data. Microsoft will protect the Institution Data it receives from or on behalf of Institution according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

This amendment must be attached to a signature form to be valid.