

Services Agreement Number

00-10631

State Reference Number

B-00-017

MICROSOFT MASTER SERVICES AGREEMENT- STATE & LOCAL

This MICROSOFT MASTER SERVICES AGREEMENT-STATE & LOCAL is entered into between the *State of Connecticut, acting by its Department of Information Technology, Contracts and Purchasing Division ('customer')* and Microsoft affiliate ("*supplier*") as of the effective date identified below. If different from the main contact information, any notices must be addressed to the contact and locations outlined in the notices section below. We will notify you in writing if our address information changes. You must notify us in writing if your address changes.

Customer Name State of Connecticut, Department of Information Technology	Name and address of contracting Microsoft affiliate
Street Address and/or post office box 101 East River Drive	Street Address and/or post office box Microsoft Corporation One Microsoft Way SAMM D/4381
City and State / Province East Hartford, CT	City and State / Province Redmond, WA
Country and Postal Code 06108-3274	Country and Postal Code 98052
Contact Name Holly Miller-Sullivan	
Phone Number (860) 622-2246	Phone Number 425-704-5768
Fax Number (860) 610-0857	Fax Number 425-936-7329
Email Address holly.miller-sullivan@po.state.ct.us	Email Address ericapau@Microsoft.com
For the Attention of: Holly Miller-Sullivan	For the Attention of: Erica Paulson
	The agreement and attached documents should be sent to the above address for approval and processing.
Agency Notices Information (if different than above) Agency Name	<i>All NOTICES should have Copy To:</i> Microsoft Corporation, Law and Corporate Affairs
Street Address and/or post office box	One Microsoft Way
City and State / Province	Redmond, WA
Country and Postal Code	USA 98052
Contact Name	
Phone Number	
Fax Number	425-936-7329
Email Address	ericapau@Microsoft.com
For the Attention of:	For the Attention of: Services Attorney

This agreement consists of this cover page, *and the attached Microsoft Services Agreement* terms and conditions. Any work order entered into under this agreement or service description *ordered by the Customer and accepted by the Supplier* under this agreement shall be *deemed incorporated into this agreement*.

By signing below, you represent that the information you provide on this and each of the attached forms is accurate.

This Master Agreement is not legally binding until executed by each party and when approved as to form by the Attorney General of the State of Connecticut.

Exhibit A is attached hereto and made a part thereof

Name of Lead Customer (Entity Name): STATE OF CONNECTICUT	Name of Lead MS Company: MICROSOFT CORPORATION
By: <u>Holly Miller-Sullivan</u> (Signature) HOLLY MILLER-SULLIVAN	By: <u>Jim Ward Jr.</u> (Signature) Jim Ward Jr.
Name (Print) Assist. Director	Name (Print) Group Manager, Premier Support
Title	Title
Date 7.9.01.	Date

By: <u>Gregg P. Regan</u> (Signature)
Name: <u>Gregg P. Regan</u> (Print)
Title <u>Chief Information Officer</u>
Date 7/9/01

Authority: Sections 4d-2, 4d-5, and 4d-8 of the General Statutes

Approved As To Form Bill B. [Signature] 10/11/01
Assoc. Atty. General
 (Associate Attorney General) Date

MICROSOFT SERVICES AGREEMENT

TERMS AND CONDITIONS

1. **Definitions.** In this agreement, “You” or “customer” means, as the context requires, the agency that has signed this Agreement with us “Microsoft” or the “Supplier” or the “Contractor” or the Affiliate that signs a work order or services description; “We” or “Us” means, as the context requires, the Microsoft entity that has signed this Agreement or the Affiliate that signs a work order or services description; “Affiliates” means (i) with regard to You, any government agency, department, instrumentality, division, unit or other office that is supervised by or is part of You, or which supervises You or of which you are a part; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within Your jurisdiction and geographic boundaries, provided that a State and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (ii) with regard to us, legal entities that we own, which own us, or which are under common ownership with us; “fixes” means bug fixes, workarounds, patches, beta fixes and beta builds; and “service deliverables” means computer code and related materials, other than fixes, We provide to you when performing services. Certain other terms are defined as set forth elsewhere in this agreement, including work orders or service descriptions.

2. **Services.** We agree to provide product support and consulting services under the terms and conditions of this Agreement. The precise scope of the services will be specified in work orders (for consulting services) or services descriptions (for support services) entered into under this Agreement. You or any of your affiliates can enter into *customer authorized* work orders and services descriptions under this agreement with our local affiliate. Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This agreement does not obligate either of us *or customer* or any of our affiliates to enter into any work order or services description.

3. **Fees and expenses.** You agree *or customer* to pay us the fees described in each work order and services description, and reasonable out-of-pocket travel and living expenses (if any). You agree to pay within *45 days of in accordance with State Statutes* upon receipt of a properly prepared the date of our invoice. We will not change our fees during the term of a work order or services description, but we may adjust fees prior to entering any new work order or services description. Our fees exclude taxes, duties, tariffs or other governmental charges or expenses (including, without limitation, any value added taxes), and such applicable taxes will be billed to and paid by you. We are responsible for taxes based upon our personal property ownership and net income.

4. **Supportability.** During the term of a services description, we can add support for new products or discontinue support for products that are obsolete or the intellectual property rights of which are sold to another company. If we discontinue support for a product, we must give you six months prior notice. If we sell to another company the intellectual property rights to a product, we will give you notice of the sale and either (i) arrange for the other company to continue the support immediately; or (ii) continue support ourselves for 90 days to give you time to make alternative arrangements.

There may be cases where your implementation of our products cannot be effectively supported. As part of providing the support services, we will notify you if we reach that conclusion. If you do not modify that implementation to make it effectively supportable within 30 days after the notice, we will not be obligated to provide additional support services for that particular implementation.

We will provide support services only for Microsoft products that are validly licensed.

5. **Restrictions on use.** You may not:

- Rent, lease, lend or host service deliverables, except where we agree by written agreement;
- Reverse engineer, de-compile or disassemble fixes or service deliverables, except to the extent expressly permitted by applicable law despite this limitation or where we agree by written agreement;
- Transfer licenses to, or sublicense, fixes or service deliverables to the U.S. Government.

You acknowledge that software licensed under this agreement is of U.S. origin. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and country destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

6. Ownership and license. Software and materials that we provide in connection with the services will be provided subject to the following provisions:

a. Consulting Services. Each work order will specify the rights in computer software and materials delivered under it.

b. Support Services. Use of any fixes is defined by the product use rights for the affected product or, if the fix is not provided for a specific product, any other use terms we provide. All fixes are licensed to you. We will provide you with a copy of the applicable product use rights or other use terms, or we will make them available to you either by publication on the World Wide Web at a site we identify to you or by some other reasonable means. You acknowledge you have access to the World Wide Web. We may also provide other computer software and materials in connection with support services. The services description will specify the rights in the computer software and materials for those services. We do not transfer ownership rights in any licensed products and we reserve all rights not expressly granted.

7. Confidentiality.

a. Confidential information. Confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of our agreements. All beta products are confidential unless excepted below.

Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it under the relevant agreement; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

b. Use of confidential information. For a period of five years after disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the disclosing party will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

You and We will take reasonable precautions to safeguard each other's confidential information. Such precautions will be at least as great as those we each take to protect our own confidential information. You and we will disclose each other's confidential information to our employees or consultants only on a need-to-know basis and subject to the confidentiality obligations imposed here. When confidential information is no longer necessary to perform any obligation under any of the agreements, each of us will return it to the other or destroy it at the other's request. Notwithstanding any other provision of this Section 7, you may disclose the terms and conditions of this Agreement in accordance with the requirements of your public records law.

c. Retained rights. You and we are free to develop products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, these people are free to use the information that they remember related to information technology, including ideas, concepts, know-how or techniques, so long as they do not disclose confidential information of the other party in violation of this agreement. This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

We or you may provide suggestions, comments or other feedback to the other with respect to the other's confidential information. Feedback is voluntary and the receiving party is not required to hold it in confidence. The receiving party will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind.

d. Cooperation in the event of disclosure. Each of us will immediately notify the other upon discovery of any unauthorized use or disclosure of confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use.

e. Knowledge base. We may use any technical information we derive from providing the services relating to problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.

such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

c. Application. The limitations on and exclusions of liability for damages in this agreement 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.

11. Term and termination. This agreement shall remain in effect *once approved by the Attorney General of the State of Connecticut. Termination will only apply to outstanding work orders and/or service descriptions to which this Agreement applies* until terminated. You may terminate this agreement, any work order or services description for convenience by giving us 30 days written notice. Either party may terminate this agreement or any work order or services description if the other party is in material breach or default of any obligation that is not cured within 30 days notice of such breach. You agree to pay all fees for acceptable services performed and agreed upon expenses incurred prior to termination. Termination of this agreement will terminate only the outstanding work orders and services descriptions to which it applies.

12. Survival. The provisions regarding warranty, limitation of liability, confidentiality, fees and expenses, obligations on termination or expiration, ownership and license, and miscellaneous of this agreement, and any provisions specified as surviving in a work order or services description, survive any termination or expiration of this agreement, any work order or services description.

13. Insurance. At all times when we will be performing services on your premises, we will have the following insurance coverage which does not limit Our liability in the case where such insurance is inadequate:

a. Commercial general liability covering bodily injury and property damage liability with a limit of not less than \$1,000,000 each occurrence;

b. Workers' compensation (or maintenance of a legally permitted and governmentally approved program of self-insurance) covering our employees under applicable workers' compensation laws for work-related injuries suffered by our employees;

c. Employer's liability with limits of not less than \$1,000,000 each accident; and

d. Software errors and omissions liability covering damages arising out of negligent acts, errors, or omissions in the performance of this agreement, with a limit of liability of not less than \$2,000,000 each claim.

We will provide you with certificates of insurance evidencing this coverage on request.

14. Miscellaneous.

a. Entire agreement. The documents identified *within* this Agreement constitute our entire Agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications *for any similar service agreement*. The terms of these documents shall control in the following order: (i) this Agreement, and (ii) any work order or services description. This Agreement can be changed only by an amendment signed by both parties.

b. Independent contractor; subcontractors. We provide our services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of our employees. We may use subcontractors to perform services, in which case we will be responsible for the performance of those subcontractors.

c. Notices. All notices, authorizations, and requests given or made in connection with this Agreement, including notice of termination of this agreement, must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the cover page to this Agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

d. Assignment. Neither party may assign this Agreement or any work order or service description without the written consent of the other.

e. Severability. If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

f. Waiver. No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

g. Force majeure. To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

h. Note on Java support. The products, fixes or service deliverables may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. *Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.*

i. Limitations on actions. Except for any different period required by applicable law, any action arising under this agreement must be brought within two years from the date that the cause of action arose.

j. Applicable law; dispute resolution. The terms of this Agreement will be governed by the laws of Connecticut, without giving effect to its conflict of law provisions. This choice of law does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. Disputes relating to this Agreement will be subject to applicable mandatory dispute resolution statutes and regulations of your state.

k. Obligation in lieu of indemnity. ~~In lieu of any obligation by you to indemnify us under this agreement, a work order or service description, you agree that you shall be completely responsible for any and all costs and damages arising for any claim, lawsuit, or other action to which your indemnity obligation would otherwise apply.~~ ^{initial} ~~SRW~~

HMS
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ORIGINAL