

Amendment to Contract Documents

Enrollment Number

VV_NHSWin_250418

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the terms of the MBSA and the Supplemental Agreements. All terms used but not defined in this Amendment will have the same meanings provided in the MBSA or Supplemental Agreement.

Enterprise Subscription Enrollment

Amendment ID CTM

Except for changes made by this Amendment, the MBSA and Supplemental Agreement remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the MBSA and Supplemental Agreement, this Amendment shall control.

For the avoidance of doubt, Section 9.b. of the MBSA termed "Termination" will apply to this Enrollment. Specifically, termination of the MBSA will not affect any existing orders or Supplemental Agreements, but Customer will no longer be able to enter into Supplemental Agreements after the effective date of termination.

Notwithstanding anything to the contrary or in addition to any terms in the Agreement and Enrollment, and for the purposes of this Enrollment only, the Enrollment is amended as follows:

1. **Effective Date:** The effective date of this Enrollment will be 2nd April 2018.
2. **Term:** The paragraph of the Enrollment titled "Term" is amended by the following:

This Enrollment is for 60 months at the request of the Enrolled Affiliate and Enrolled Affiliate acknowledges that Microsoft has offered the option of a 36 month term which Enrolled Affiliate declined. This Enrollment will therefore expire 60 full calendar months from the effective date.

For the avoidance of doubt, the effective date of this Enrollment will be 2nd April 2018 and the expiry date of this Enrollment will be 30th April 2023.

3. **Software Asset Management**

Notwithstanding the compliance obligations within the agreement, Enrolled Affiliate agrees that during the Term of the Enrollment, and on a frequency not less than quarterly, to establish the actual licensed quantity of Windows E5 (sku AAA-22363) and VDA E5 (sku AAA-51072) in order to address any shortfall arising between the number deployed versus licenses purchased ("Shortfall"). Enrolled Affiliate also agrees to allocate/nominate an asset owner to support this software asset management activity. To the extent that a Shortfall is identified then Enrolled Affiliate shall ensure that this is fully licensed by placement of an order within 30 days at the prices set out in the Channel Price Sheet (CPS) which accompanies this Enrollment.

4. For the purposes of this agreement, the definition of Affiliates includes Government Entities.
5. For the purposes of this Enrollment, Section 1. entitled "Enrolled Affiliates Enterprise" will be deleted in its entirety and replaced as follows:

1. "Enrolled Affiliate's Enterprise."

- a. Identify which Affiliates are included in the Enterprise (Required). Affiliates must be separate legal entities, not departments, divisions, or business units.

Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates.

- ☒ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise.):

each Clinical Commissioning Group (CCG);
 each Commissioning Support Unit (in respect of its support of CCGs);
 each NHS Trust;
 each Mental Health Trust;
 each Foundation Trust;
 Ambulance Trusts;
 each arms-length body ("ALB") as defined below:
NHS England (previously known as the NHS Commissioning Board)
NHS Improvement
Care Quality Commission
National Institute for Health and Care Excellence
Public Health England
NHS Digital (previously known as the Health and Social Care Information Centre)
Health Education England
Health Research Authority
NHS Blood and Transplant
Medicines and Healthcare Products Regulatory Agency
NHS Business Services Authority
NHS Resolution (previously known as NHS Litigation Authority)
Human Fertilisation and Embryology Authority
Human Tissue Authority
NHS Counter Fraud Authority

- b. Please indicate whether Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

6. "One-time mid-year adjustment". Enrolled Affiliate must notify Microsoft no later than 30 days prior to the mid-year point of the first year of the Enrollment, their intent to revise the Affiliate list (see Enrolled Affiliate's Enterprise section 5 of this amendment) to exclude Affiliates. This revision will be supported in the 1st year of the Enrollment and is termed a "one-time mid-year adjustment". Enrolled Affiliate is however receiving beneficial pricing within the Enrollment and a non-standard Enrollment Term. Accordingly, it is agreed that during the term of this new Enrollment, the Online Service subscription licenses may not be reduced from the agreed "minimum commitment" referenced within the table below.

SKU	Description	Quantity
AAA-22363 / AAA-51072	WinE5PerDvc ALNG SubsVL MVL PerDvc / WIN VDAE5perDVC Alng MonthlySub Per Device	1,000,000

7. **"Affiliate inclusion at anniversary"**. Enrolled Affiliate must notify Microsoft no later than 30 days prior to the anniversary of this Enrollment, their intent to revise the Affiliate list (see Enrolled Affiliate's Enterprise section 5 of this amendment) to include Affiliates. If new inclusions are required (that don't meet the broad definitions in the existing Affiliate list - section 5), MS agree to review and where applicable, allow such an inclusion. This revision supported at each anniversary of the Enrollment and is termed "Affiliate inclusion at anniversary". Enrolled Affiliate will be subject to the contractual obligations in Section 2.a.(i) and 2.g.(i) of this Enrollment.

8. **"Affiliate exclusion at anniversary"**. Enrolled Affiliate must notify Microsoft no later than 30 days prior to the anniversary of this Enrollment, their intent to revise the Affiliate list (see Enrolled Affiliate's Enterprise section 5 of this amendment) to exclude Affiliates. If new exclusions are required beyond those agreed after 6 months, MS and Enrolled Affiliate will review at anniversary and where applicable (and jointly agreed) allow the exclusion of those Affiliates. This revision supported at each anniversary of the Enrollment and is termed "Affiliate exclusion at anniversary".

Customer is however receiving beneficial pricing within the Enrollment and a non-standard Enrollment Term. Accordingly, it is agreed that during the term of this new Enrollment, the Online Service subscription licenses may not be reduced from the agreed minimum commitment referenced within the table in section 6.

9. In recognition of the central procurement of windows through this Enrollment, Microsoft will (i) allow Affiliates referenced in section 5, to remove the Windows/VDA component from their individual Enterprise Agreements on anniversary or renewal (whichever is soonest); and (ii) provide a central credit in the form of an additional 1st year discount in recognition of the duplication of investment between this Enrollment and the individual local Enrollments.

Microsoft provides credits detailed below into this Enrollment for **unexpired Software Assurance** from the following Enrollments termed "Credit adjustment table":

"Credit adjustment table":

Enrollment Actual End Date	Anniversary month	Months credit	Enrollment	End Customer Organization Name	Current Product Equivalent	Total
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10. Section 6 of the MBSA entitled ***Defense of third party claims*** is deleted in its entirety and replaced as follows:

6. *Defense of third party claims.*

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended will be consulted by the defending party and must provide the defending party with all requested assistance, information, and authority. For the avoidance of doubt, the defending party will not, without prior consultation of the party being defended, consent to a settlement that contains any admission of liability by the party being defended or that requires additional payments from such party. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product, Fix or Services Deliverable made available by Microsoft for a fee and used within the scope of the license granted (unmodified from the form provided by Microsoft and not combined with anything else) misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, at its option, either (1) modify or replace the Product, Fix or Services Deliverable with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product, Fix, or Services Deliverable after being notified to stop due to a third-party claim.
- b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or non-Microsoft software hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product, Fix, or Services Deliverable alone or in combination with anything else, violates the law or damages a third party.

11. For the purposes of this Enrollment and, specifically relating to Windows Defender Active Threat Protection "WDATP", the additional commitments as pertains to Data Processing apply:

Access Control

Access Policy. Microsoft maintains a record of security privileges of individuals having access to Customer Data.

Access Authorization

- Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data.
- Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months.
- Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources.
- Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins.
- Least Privilege
- Technical support personnel are only permitted to have access to Customer Data when needed.
- Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function.

Integrity and Confidentiality

- Microsoft instructs Microsoft personnel to disable administrative sessions when leaving premises Microsoft controls or when computers are otherwise left unattended.
- Microsoft stores passwords in a way that makes them unintelligible while they are in force.
- Authentication
- Microsoft uses industry standard practices to identify and authenticate users who attempt to access information systems.
- Where authentication mechanisms are based on passwords, Microsoft requires that the passwords are renewed regularly.
- Where authentication mechanisms are based on passwords, Microsoft requires the password to be at least eight characters long.
- Microsoft ensures that de-activated or expired identifiers are not granted to other individuals.
- Microsoft monitors, or enables Customer to monitor, repeated attempts to gain access to the information system using an invalid password.
- Microsoft maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.
- Microsoft uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.

Network Design. Microsoft has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.

12. For the purposes of this Enrollment and, specifically relating to Windows Defender Active Threat Protection "WDATP", the additional commitments apply:

If Customer provisions (or Microsoft provisions on Customer's behalf) its Windows Defender ATP tenant in the United Kingdom ("UK") Geo, Microsoft will store the Windows Defender ATP Customer Data at rest and in an encrypted form only within UK Geo, provided that Microsoft may also store such Customer Data in the Windows Defender ATP central storage and processing unit in the Microsoft US Geo in a pseudonymized form. Any de-pseudonymization of the central storage Customer Data that results in storage at rest must comply with all the foregoing storage at rest obligations. The foregoing Customer Data may contain Personal Data and is subject to all terms of this Agreement applicable to Customer Data and to Personal Data.

13. For the purposes of this Enrollment and, specifically relating to Windows Defender Active Threat Protection "WDATP" and Windows Analytics (WA), the additional commitments apply:

Where Windows Defender Advanced Threat Protection (WDATP) or Windows Analytics (WA) Online Services have built-in dependencies on any other Microsoft Online Service or other Microsoft capability, Microsoft will ensure that alterations to or retirement of those dependencies by Microsoft does not impact Microsoft's abilities to meet its obligations with respect to WDATP or WA under these Online Services Terms.

14. For the purposes of this Enrollment and, specifically relating to Windows Defender Active Threat Protection "WDATP" and Windows Analytics (WA), the Data Retention section of the Online Services Terms are hereby amended by adding the following:

Data Retention

The Windows Defender Advanced Threat Protection and Windows Analytics portion of the product does not contain extractable Customer Data therefore the Customer Data extraction terms in the OST do not apply. *Notwithstanding the foregoing, while Microsoft makes available any API with functionality for extraction of some Customer Data from these Online Services, then during the term of the Enrollment such APIs will function as documented.*

Previous Enrollment(s)/Agreement(s) Form

Entity Name: NHS Digital

Contract that this form is attached to: Enterprise Subscription Enrollment

For the purposes of this form, "entity" can mean the signing entity, Enrolled Affiliate, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program Agreement.

Please provide a description of the previous Enrollment(s), Agreement(s), Purchasing Account(s), and/or Affiliate Registration(s) being renewed or consolidated into the new contract identified above.

- a. Entity may select below only one previous contract from which to transfer the Software Assurance (SA) Benefit contact details, i.e., benefits contact (*not* the SA manager) and the program codes, to this new contract.

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

Microsoft Internal Use Only:

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