

Microsoft Server Product Purchasing Group Participation Agreement

This Participation Agreement ("Agreement") is dated _____, 2012, by and between the undersigned Pennsylvania School District ("District") and Lancaster-Lebanon Intermediate Unit 13 ("IU13"). The District desires to jointly purchase certain Microsoft server platform software products (the "Software Products"), under a four (4) year commitment, pursuant to Microsoft's Server Platform Academic Volume Licensing Program (the "Microsoft Program"), as part of a joint purchasing group of public school entities (the "Group") facilitated by IU13. IU13 and the District, intending to be legally bound, hereby agree to the following terms and conditions, as of the Effective Date stated below:

1. Purchasing Group. The District hereby joins and will participate in the Group (the District and the participants in the Group are sometimes referred to herein as "Members"), and consents to IU13 being the facilitator and spokesperson for the Group. The District appoints IU13 as its agent for purposes of acting on behalf of the Group and the District to execute and to communicate with Microsoft in connection with the following Microsoft Program documents, copies of which have been provided to the District, and all related, referenced and ancillary documents, orders and other instruments (collectively, the "Microsoft Agreement"): (a) Campus and School Agreement ("CSA"); (b) Enrollment of Server Platform Academic; (c) Amendment ID CTM; and (d) Campus and School Media Election Form. Notwithstanding IU13's authority described above, if IU13 seeks the approval of the Group with respect to particular matters at any time, such approval need only be by majority consent of the Members (unless otherwise stated in this Agreement) and which approval shall be binding on all Members. All acts taken by IU13 in good faith on behalf of the Members and the Group shall also be binding on the District. The District's designated contact shall be authorized to act for and express the consent of the District for purposes of the Group and this Agreement.

2. Effective Date & Purchase Commitment. The "Effective Date" of this Agreement shall be the same as the effective date of the CSA. The District shall purchase the Software Products each year of the term of this Agreement for at least the minimum number of "Users" (as that term is utilized in the Microsoft Agreement) specified by the District concurrently herewith. The District understands and agrees that such minimum number of Users is critical and material to this Agreement and a failure of the District to meet such minimum may expose the other Members to a higher cost for the Software Products and other potential costs and expenses for which the District will be responsible hereunder. Notwithstanding the foregoing, neither IU13 nor the Group represent or warrant that the District, even if such minimum number as Users is met, is or shall be qualified for participation in the Microsoft Program, or that such minimum number of Users is or shall be sufficient for any District to qualify to participate in the Microsoft Program.

3. Other Obligations. The District shall comply with the terms and conditions of the Microsoft Agreement as an "Institution" thereunder and shall be responsible for the acts and omissions of the District and its Users. The District shall pay IU13, as and when due, all amounts required to be paid pursuant to the Microsoft Agreement and all of the District's orders thereunder, as well as all expenses, costs and reasonable administrative charges incurred by IU13 and/or the Group and billed to the District arising from the operations of the Group or related IU13 administrative services. IU13, in its discretion, may require the District to pre-pay certain charges owed to third parties prior to incurring such obligations. All amounts not paid by the District when due shall bear interest at the rate of one percent (1%) per month, or (if lower) at the highest rate permitted by law.

4. Term & Termination.

(a) This Agreement shall be for a term of four (4) years beginning on the Effective Date (or, if different, the length of the Enrollment License Period as defined in the Microsoft Agreement) (the "Term"), and may be renewed or extended only with the written consent of the District and IU13. Either IU13 or the Group (acting by majority vote/consent) shall be permitted to terminate the District's membership and/or participation in the Group with immediate effect, upon written notice to the District (a "Termination for Cause"), if the District: (i) materially breaches any of provision of this Agreement and does not remedy such breach within thirty (30) days after receiving written notice thereof, or fails to comply with the terms and conditions of the Microsoft Agreement thereby causing a breach or default thereunder; (ii) violates any laws or regulations; (iii) takes any action or engages in any or activity which places IU13, the Group or the funding of any Group activities or services in jeopardy or exposes IU13, the Group or any other Member to any potential fine, liability or penalty; (iv) is or becomes suspended or debarred by the Pennsylvania or federal government; or (v) takes any act or is responsible for any other event or circumstance materially adverse to the Group, the other Members or IU13 that IU13 or the Group reasonably considers just cause for termination.

(b) IU13 or the Group also shall be permitted to terminate the District's membership and/or participation in the Group if the need by most of the Members for the Group, the Software Products or the services or products it facilitates or provides (or any material portion thereof) no longer exists or is cancelled, eliminated or discontinued for any reason at any time, or if the funds or funding to support the Group or its services or activities (or a material portion thereof) is/are not budgeted or appropriated or are otherwise unavailable for any reason at any time.

(c) Neither anything contained in nor any action taken under this Section 4 shall constitute a waiver of any other right or remedy available against the District for any breach or violation of this Agreement. No termination of the District's membership, participation or other rights in or under the Group shall be deemed a waiver or release of the District's obligations under this Agreement, which obligations shall survive such termination.

5. Liability. With respect to any actual or asserted liability against IU13, the Group or any Member (each an "obligor"), arising from any Group activities, agreements or purchases, because of (a) the acts or omissions of the District or any of its Users, (b) a Termination for Cause of the District, or (c) a claim that such obligor is or may be held liable or responsible for the debts or obligations of the District, then the District shall indemnify and hold harmless such obligor(s) from and against any and all such liabilities, costs and expenses, including (without limitation) reasonable attorneys' fees incurred in connection therewith. This section shall survive the termination or expiration of this Agreement and the District's participation in the Group.

6. Release. Neither IU13 nor any Member is or shall be responsible for the acts or omissions of any other Member or the failure of any other Member to meet its minimum User or purchasing obligations hereunder. To the extent IU13 or any Member, or any officer or employee thereof, acts as an agent or representative of the District or the Group (each an "Agent"), then the District agrees to release, indemnify and hold harmless each such Agent from and against any and all damages, claims, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees), arising or resulting from such Agent's actions or inactions taken in good faith in such capacity.

7. Special Provisions & Limitations.

(a) Except as expressly stated herein, nothing in this Purchasing Group Agreement shall be deemed a direct or indirect waiver of or limitation to any sovereign or governmental immunity, in any respect, applicable to IU13, any Member, or the Group (including, without limitation, under the Pennsylvania Political Subdivision Tort Claims Act) or impose liability, directly or indirectly, on IU13, any Member, or the Group from which it would otherwise be immune under applicable law. Neither IU13, the Group nor the District shall be responsible for delays or failures in performance resulting from matters beyond its control, including without limitation acts of God, strikes, lockouts, riots, war, terrorist strikes, vandalism, epidemics, changes in law, casualty, utility failures, etc. Except for the District's obligations set forth in this Agreement, (i) no Member shall be responsible for any claims pertaining to any other Member, and (ii) this Agreement shall not create, as between any Members, any relationship of surety, indemnification or responsibility for the debts of, or claims against, any other Member. The Group may purchase errors and omissions and other insurance for itself, its Members and their representatives on any board or committee of the Group. To the extent the Group has any employees, the Group may contract for policies of group insurance and employee benefits, including social security, for its employees or provide such benefits through self-insurance or other arrangements.

(b) IU13 MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GROUP, THIS AGREEMENT, THE SOFTWARE PRODUCTS OR ANY SERVICES OR GOODS PROVIDED BY IU13, THE GROUP, MICROSOFT AND/OR ANY OTHER VENDOR, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION. IN NO EVENT SHALL IU13 OR THE GROUP BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER FORESEEABLE OR NOT (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR ANY OTHER PECUNIARY LOSS, OR CONSEQUENTIAL OR SPECIAL DAMAGES) ARISING OUT OF THE USE OR PERFORMANCE OF, OR INABILITY TO USE, THE GROUP OR ANY SOFTWARE PRODUCTS OR ANY SERVICES OR PRODUCTS OF OR TO BE PROVIDED BY THE GROUP, IU13 AND/OR ANY VENDOR.

8. Miscellaneous. This Agreement shall be governed by Pennsylvania law, notwithstanding any conflict of laws rules. The Court of Common Pleas of Lancaster County, Pennsylvania shall have exclusive jurisdiction and venue of any dispute under this Agreement, to be resolved by non-jury trial; IU13 and the District irrevocably waive any right to jury trial which may exist. In any action in which IU13 or the Group seeks to enforce this Agreement, IU13 and/or the Group shall be entitled to collect its reasonable attorneys' fees and other expenses from the District. IU13 and the District shall be and remain independent contractors pursuant to this Agreement. Captions used herein are for convenience only. The word "including" as used herein is intended to be exemplary only, and not limiting, of the word or phrase it modifies. The District may not transfer or assign this Agreement in whole or in part without IU13's prior written consent. This Agreement shall be binding upon and shall benefit IU13, each Member and the District and their respective successors and permitted assigns. The Members are intended beneficiaries of this Agreement. This Agreement may be executed in counterparts.

District: _____

Lancaster-Lebanon Intermediate Unit 13

By: _____
Name/Title: _____

By: _____
Name/ Title: _____