

## Microsoft Live@edu Terms of Use (Organizational)

### Non-Standard for Canada Only

This Microsoft Live@edu Terms of Use ("**Agreement**") is entered into between the Carleton University ("**Institution**") and Microsoft Corporation ("**Microsoft**") as of the date that both the Institution and Microsoft have signed this Agreement ("**Effective Date**"). This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications between the parties with respect to the subject matter hereof. In order to use the E-Mail Service under this Agreement, Institution must be recognized by Microsoft, in its sole discretion, as a legitimate academic enterprise focused primarily on providing or administering educational services to End Users.

This Agreement reflects the changes agreed to in a separate agreement with another Live@edu Canadian customer and those changes are being extended to Institution under this Agreement. A number of those changes further describe the E-mail Services, including process and details on features, functions, and use. The intent of those changes are not to make custom changes to the E-mail Service for the Institution or any one customer or group of customers, but rather more fully describe how the E-mail Service works as of the date of this Agreement for all Live@edu customers. As noted in this Agreement, the E-mail Services are dynamic and subject to change over the term of this Agreement. In the event of any conflict between the description of the E-mail Services under this Agreement and currently Microsoft published information on the E-mail Services, the current published descriptions will control (i.e., Institution will be receiving the same E-mail Services that all Live@edu customers receive).

#### 1. **Definitions.**

In this Agreement the following definitions apply:

- a. "**Advertisement**" means any advertisement for products or services including, without limitation, graphic display advertisement, e.g. banner ad, text only, video or audio advertisement. "**Advertising**" has a correlative meaning.
- b. "**Alumnus**" means individuals who have received degrees or post-secondary diplomas or certificates from the Institution, or individuals who have completed one year of full-time studies, or the equivalent thereof as determined by the Institution, towards such a degree, diploma or certificate and are no longer registered at the Institution for 36 months from the date of the last course in which the individual was enrolled.
- c. "**Business Day**" means any day that is not a Saturday, Sunday or statutory holiday in the Province of Ontario.
- d. "**Canadian Anti-Spam Legislation**" means the Canadian federal statute entitled *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, as and when proclaimed in force.
- e. "**Contract Year**" means a period of twelve (12) consecutive months during the Term and each renewal, the first such Contract Year commencing on the Effective Date and subsequent Contract Years commencing on the anniversary of the Effective Date.

- f. **"Covered Data and Information"** means data, including Personal Information and its derivatives, received by or maintained in Microsoft's or its subcontractors' facilities or on Microsoft's or its subcontractors' networks where such data was provided by Institution or End Users to Microsoft or its subcontractors through the Institution's or End Users' use of the E-Mail Service or generated through the Institution's or End User's use of the E-Mail Service.
- g. **"Credentials"** means any mechanism, such as a certificate, user ID, or Password, that Institution uses to add, modify or delete End Users' IDs and any associated attributes under this Agreement.
- h. **"Deployment Tool"** has the meaning given to it in Section 2.b.
- i. **"End User"** means any Alumnus, Student, applicant, faculty, staff member, volunteer, staff retiree, or other individual associated with Institution who is authorized by Institution to access and use the E-Mail Service.
- j. **"E-Mail Service"** has the meaning given to it in Section 2.a.i.
- k. **"Force Majeure Event"** has the meaning given to it in Section 10.f.
- l. **"ILM"** means Microsoft's Identity Life Cycle Manager software.
- m. **"Institution Domain"** means one or more second level or lower level domain name(s) owned, operated, and/or managed by the Institution.
- n. **"Institution Marks"** has the meaning given to it in Section 5.a.
- o. **"Major Incident"** means a problem with a system, network, server, or critical application under Microsoft's sole and direct control or the sole and direct control of one or more of Microsoft's subcontractors that prevents or unreasonably delays a majority of End Users from using the E-Mail Service, including the E-mail Service's identification, authentication or authorization systems, for more than fifteen (15) continuous minutes.
- p. **"Microsoft Co-Branding Tool"** means the Microsoft provided software that enables Institution to upload Institution Marks for use with the E-mail Service and that also allows Institution to suppress Advertisements as provided for in Section 2.c.
- q. **"Microsoft Consumer Services"** means any Internet-based or client-based service or web site that Microsoft generally makes available to consumers without a fee that is branded or partially branded "Windows Live", "MSN", "Office Live", "Microsoft Office Web Apps", and "Windows Live SkyDrive" or successor branding. The Microsoft Consumer Services do not include the E-Mail Service.
- r. **"Microsoft Deliverables"** has the meaning given to it in Section 6.a.
- s. **"Microsoft Marks"** has the meaning given to it in Section 5.b.
- t. **"Microsoft Services"** means collectively, the E-Mail Service and the Microsoft Consumer Services.
- u. **"Non-browser Client"** means any client other than a browser client such as a mobile device, Microsoft Outlook, etc.

- v. "Password" means the Institution password associated with an End User's email account for the E-Mail Service.
- w. "Personal Information" has the meaning given to it in the *Freedom of Information and Protection of Privacy Act* (Ontario).
- x. "Policies" has the meaning given to it in Section 2.d.i.
- y. "Privacy Representative" has the meaning given to it in Section 4.j.
- z. "SDK" has the meaning given to it in Section 2.b.
- aa. "Security Incident" has the meaning given to it in Section 4.c.vi.
- bb. "Security Incident Cap" has the meaning given to it in Section 4.c.viii.
- cc. "Service-Related Updates" has the meaning given to it in Section 3.c.
- dd. "spam" has the meaning given to it in Section 2.a.iii.3.
- ee. "Student" means any individual who is an enrolled student of the Institution.
- ff. "Support URL" has the meaning given to it in Section 2.e.ii.
- gg. "Term" has the meaning given to it in Section 8.a.
- hh. "TOU" means the terms of use Microsoft establishes with End Users governing the use of Microsoft Consumer Services, which Microsoft may update from time to time.
- ii. "WLID Management Agent" has the meaning given to it in Section 2.b.

**2. Microsoft Services Deployment.**

a. E-Mail Service

- i. Description. Microsoft will provide to Institution for the benefit of Institution's End Users a managed e-mail service using the Institution Domain comprised of the then-current version of the free web-based e-mail service that is hosted, managed, and marketed by Microsoft and that is branded "Outlook Live" (or successor branding) and is provided by Microsoft to Institution under this Agreement (the "E-Mail Service"). The E-Mail Service may be accessed and used by End Users through W3C (World Wide Web Consortium) standards-compliant Internet browsers without the necessity of installing any other software on the End User's computer.
- ii. Spam and Malware. Institution acknowledges and Microsoft agrees that Microsoft will filter the E-Mail Service for spam and malware.
- iii. Suspension/Termination of E-mail Accounts. Institution and Microsoft acknowledge and agree that either party may suspend or discontinue the provision of the E-Mail Service to any End User, except that Microsoft may do so only if it reasonably believes the End User has engaged in any of the following:
  - 1. engaged in, facilitated or furthered unlawful conduct;

2. used the Microsoft Services in a way that defames Microsoft or its affiliates, resellers, distributors and/or vendors;
3. used any portion of the Microsoft Services as a destination linked from any unsolicited bulk messages or unsolicited commercial messages ("spam");
4. used any automated process or service to access and/or use the Microsoft Services (such as a BOT, a spider, periodic caching of information stored by Microsoft, or "meta-searching");
5. used any unauthorized means to modify or reroute, or attempt to modify or reroute, the Microsoft Services;
6. materially damaged, materially disabled, materially overburdened, or materially impaired the Microsoft Services (or the network(s) connected to the Microsoft Services) or materially interfere with anyone's use and enjoyment of the Microsoft Services; or
7. resold or redistributed the Microsoft Services, or any part of the Microsoft Services.

Microsoft will in accordance with its standard operating procedures provide notice of any suspended E-mail Service accounts within a commercially reasonable period of time.

- b. Deployment Tools. Microsoft will make available to Institution at no cost at least the following two tools to enable provisioning and managing Credentials for End Users under this Agreement: (a) a software development kit ("SDK") and (b) a management agent ("**WLID Management Agent**"). Either tool ("**Deployment Tool**") can be used independently of the other to provision and manage End User accounts, although the WLID Management Agent requires ILM, which Institution may purchase separately at its option, in order to provision and manage accounts. The SDK does not require ILM.
- c. Advertising and Special Caveat for Students.
  - i. Microsoft's Right to Sell Advertising. Between the parties, Microsoft will have the sole and exclusive right to sell and serve Advertising on the Microsoft Services. Such Advertising will be developed, sold and served in Microsoft's discretion subject to Section 2.c.ii. Without limiting the generality of the foregoing, Institution acknowledges and agrees that, subject to Section 2.c.ii., Microsoft may display Advertising for Microsoft Services on the web interface of the E-Mail Service that is targeted to the Institution Domain, in whole or in part. All Advertising on the web interface of the E-Mail Service will be displayed in accordance with the Microsoft Advertising Creative Acceptance Policy Guide available at: <http://Advertising.microsoft.com/creative-acceptance-policy> and any successor policy thereto.
  - ii. Advertising Restrictions. Notwithstanding Section 2.c.i, Microsoft agrees not to display on the web interface to the E-Mail Service or any Non-browser Client interface to the E-Mail Service, any Advertisements that promote Microsoft or third party products or services, except that Microsoft may display such Advertisements on the web interface of the E-Mail Service available to Alumni. Microsoft will supply Institution with access to and use of the Microsoft Co-Branding Tool, which will enable Institution, at its sole discretion, to suppress the

display of Advertisements for Microsoft or third party products or services across the Microsoft Consumer Services, except for the Microsoft Services available to Alumni and except for Windows Live Messenger. (Institution acknowledges that ad suppression is not possible for Windows Live Messenger.) As of the Effective Date, there is no Advertising to Alumni on the web interface or any other interface to the E-Mail Service. Microsoft will provide Institution reasonable prior written notice of any plans to provide Advertising to Alumni on the web interface to the E-Mail Service and, upon request, Microsoft will provide Institution with Microsoft's then-current Advertising guidelines.

- iii. Delivery of E-mail and Electronic Correspondence. Institution agrees that Microsoft shall have the right to deliver e-mail and other electronic correspondence to End Users regarding the E-Mail Services as permitted by applicable law and that Microsoft may seek End Users' permission to send e-mail correspondence in accordance with applicable law. "Applicable law" for the purposes of this paragraph, includes the Canadian Anti-Spam Legislation.

d. Terms of Use.

- i. E-Mail Service. The E-Mail Service is offered to Institution for Institution's own use and that of a limited number of End Users associated with the Institution. Institution shall not resell the E-Mail Service or otherwise offer the E-Mail Service to the public. Institution acknowledges and agrees that each End User's use of the E-Mail Service is subject to the terms, conditions, privacy policies, and acceptable user policies (collectively, "**Policies**") between End User and Institution; provided, however, that Institution shall not attempt to authorize or permit any activities in conflict with the terms and conditions of this Agreement. In addition, to the extent that any Personal Information subject to the law of a member state of the European Economic Area is processed by the E-Mail Service, Microsoft shall act solely as Institution's data processor (as that term is defined in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data).
- ii. Microsoft Consumer Services. End Users who use the Microsoft Consumer Services shall be subject to the applicable TOU, including Microsoft's privacy policy.
- iii. Parental Consent. Institution, and not Microsoft, shall obtain any parental consent as may be required by applicable law for each End User's use of the E-Mail Service before permitting access to the E-Mail Service to each such End User. If such parental consent is retracted, then Institution shall ensure that Personal Information is not collected from the affected End User(s) except as permitted by applicable law. The administrative tools made available to the Institution by Microsoft as part of the E-Mail Service will permit the Institution to suspend or terminate End Users' accounts. "Applicable law", for the purposes of this paragraph, means the laws of the Province of Ontario and the federal laws of Canada applicable therein.

e. Support.

- i. Support to End Users. Microsoft will provide to End Users the same level and categories of customer support with respect to the Microsoft Services as Microsoft then-currently provides to other commercial end users of each such Microsoft Consumer Services via the website located at <http://support.live.com> or a subsequent URL as determined by Microsoft. Notwithstanding the foregoing,

Institution acknowledges and agrees that Institution will provide front-line support to its End Users for the E-Mail Service. The front-line support to be provided by Institution consists of receiving support calls from End Users at the Institution's help desk, using reasonable efforts to troubleshoot the support calls using such administration manuals and guides as Microsoft may make available through the Support URL (defined below), and, for those problems that cannot be solved by Institution through the use of such documentation, contacting the Microsoft help desk for second level support.

- ii. Second Level Support. Microsoft will provide a free support offering to Institution, as described on the website located at: <http://www.microsoft.com/liveatedu/hosted-email-support.aspx?locale=en-US&country=US> or a subsequent URL (the "**Support URL**"), which Microsoft reserves the right to change from time to time. In addition to the free support offering, Microsoft reserves the right to add an optional premium paid support offering for Institution at a future date.
- iii. Major Incidents. In the event of a Major Incident, Microsoft will promptly initiate and continue reasonable actions to limit the duration and scope of any Major Incident and will use commercially reasonable efforts to restore access to and functionality of the E-Mail Service as quickly as is reasonably possible after becoming aware of a Major Incident.
- iv. Notice of Scheduled Maintenance Periods. Microsoft will provide Institution with commercially reasonable prior notice of any scheduled/planned maintenance periods for the E-Mail Service. For E-mail Service changes, the Institution will be advised of the impact of the change to its domain and the level of access (administrative and end-user) available during maintenance periods.
- v. Other Self-Serve Tools. As part of the Microsoft Tools, Microsoft will make available to Institution the ability for Institution to monitor reports of various performance metrics for the E-Mail Service that Microsoft makes available to other Live@edu customers. Microsoft will provide E-mail Service availability reporting for the Institution's domain for the following: sign-in, e-mail and calendar access, e-mail timely delivery, and e-mail management and provisioning as well as latency reporting.

### **3. Institution's Obligations.**

- a. Differentiating Between Student and Alumni E-mail Accounts. Institution will periodically and no less frequently than semi-annually update the attributes of each Credential it has created under this Agreement to accurately indicate which Credentials are associated with Students, Faculty, Staff, Alumni and others using the E-Mail Service.
- b. Institution Domain(s). Institution retains all right, title and interest in and to the Institution Domain(s). Institution is solely responsible to ensure that throughout the Term, Institution has all rights in and to the Institution Domain(s) necessary to allow Institution to have the exclusive right to use the Institution Domain(s) in connection with the E-Mail Service as provided in this Agreement. Institution will be responsible for any claim by any third party claiming any right in or to, or any infringement of any right by, the Institution Domain(s).
- c. Updates. Institution will remain current with and within a reasonably commercially timeframe install any security and software updates to software provided to Institution by Microsoft under this Agreement in respect of the E-Mail Service, including, without limitation, security patches, protocol updates and hot fixes (collectively, "**Service-Related Updates**") as directed by Microsoft. Microsoft will provide commercially reasonable notice

of Service-Related Updates and Institution will use commercially reasonable efforts to timely install the Service-Related Updates within Institution's control. For certainty, Service-Related Updates will not apply to any of Institution's systems that are unrelated to the E-Mail Service. End Users will be separately responsible for implementing any updates to their systems in respect of the E-Mail Services. Institution acknowledges and agrees that it may not be able to continue providing End Users with access to the E-Mail Services if it does not within a reasonably commercially timeframe install Services Related Updates.

- d. Suitability and Compliance. Institution is solely responsible for determining the suitability of the E-Mail Service for use for Institution's purposes, and for compliance with any legal, regulatory and/or other requirements applicable to Institution. MICROSOFT AND ITS SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE SUITABILITY OF THE E-MAIL SERVICE FOR USE FOR INSTITUTION'S PURPOSES, OR THE E-MAIL SERVICE'S COMPLIANCE WITH ANY LEGAL, REGULATORY AND/OR OTHER REQUIREMENTS APPLICABLE TO INSTITUTION, EXCEPT AS OTHERWISE PROVIDED HEREIN. Institution shall not extend any warranties or incur any obligations on behalf of Microsoft to End Users or any other third party. Notwithstanding the foregoing, Microsoft represents and warrants to Institution that:
- i. Microsoft has all necessary rights, licenses and approvals required to perform the E-Mail Service in accordance with this Agreement;
  - ii. the E-Mail Service will be performed with professional care and skill consistent with industry standards applicable to such Services;
  - iii. there are no cookies, actions tags, or any similar technology used by Microsoft in the E-Mail Services to obtain, track, monitor, implement any form of profiling or assessment of Covered Data and Information except as may be described in this Agreement to provide and improve the E-Mail Services;
  - iv. it shall use reasonable commercial efforts to prevent the inclusion of viruses or similar malicious software, in the E-Mail Service;
  - v. it shall use commercially reasonable efforts to protect Covered Data and Information against deterioration or degradation of data quality and authenticity;
  - vi. it will comply with all Canadian provincial, federal and local laws applicable to it as a service provider under this Agreement; and
  - vii. it will comply with Canadian Anti-Spam Legislation to the extent it is applicable to Microsoft's provision of the E-mail Service to Institution. Institution will, at Microsoft's request, provide commercially reasonable assistance to Microsoft in support of its obligations under the Canadian Anti-Spam Legislation.

#### **4. Privacy, security and adverse use.**

- a. Independent Collection of End User Data. Except with respect to data provided to Microsoft for the purpose of providing the E-Mail Service to End Users (at a minimum End Users shall provide a user name or id and password), no Personal Information of End Users will be required to be provided by one party to the other under this Agreement. In providing the E-Mail Service Microsoft will be receiving information from End Users that may contain Personal Information. Microsoft shall not collect, use or disclose any Personal Information of End Users, or any derivatives of such Personal Information, except to provide the E-Mail Service to End Users and perform its obligations under this

Agreement or except as otherwise permitted under this Agreement. Microsoft may compile, use or disclose aggregate End User membership statistics derived from End User information with respect to a Microsoft Service so long as such disclosures do not personally identify individual End Users or disclose data from which the identity of an individual End User can be ascertained.

- b. Institution Administration Capabilities. Institution may from time to time require access to and/or copies of Covered Data and Information and related records within the E-Mail Service to respond to regulatory requirements applicable to Institution, to enforce the Institution's terms of use or other Institution policies, to respond to e-discovery or other legal process demands made to the Institution or to protect the health or safety of any End Users or other individuals. As part of the E-Mail Service, Microsoft shall make available to the Institution the administrative and compliance capabilities described at: <http://help.outlook.com/en-us/140/cc836952.aspx> in order to access, copy, download, track and archive Covered Data and Information and the related records in relation to active, inactive, suspended and terminated End User E-Mail Service accounts. Without limiting the generality of the foregoing, the following capabilities shall be made available to Institution's authorized administrators by Microsoft as part of the E-Mail Service:
- i. the ability to enable audit tracking on mailboxes for the E-Mail Service, described at: <http://help.outlook.com/en-us/140/ee845533.aspx?sl=1>;
  - ii. multi-mailbox search, described at: <http://help.outlook.com/en-us/140/cc511392.aspx>;
  - iii. delivery reports for administrators, described at: <http://help.outlook.com/en-us/140/dd256963.aspx>; and
  - iv. the ability to extract and download any Covered Data and Information and the related records contained within the E-Mail Service.

Access to administrative Passwords and to applicable support tools should be limited to those Institution employees directly responsible for providing End User support for the E-Mail Service and/or Credentials in accordance with the Agreement.

- c. Security.
- i. Protection Against Disclosure. Disclosure of the Credentials or Covered Data and Information to an unauthorized individual could put the E-Mail Services at risk, including End User e-mail addresses, Passwords, and the content of End User e-mails within the E-Mail Service. Microsoft is not responsible for any loss that may incur as a result of any unauthorized use of the Microsoft Services, except for unauthorized use by Microsoft, its subcontractors or their respective employees or agents. Each party shall take commercially reasonable security and other measures to protect the Covered Data and Information and Credentials in its possession and control from unauthorized access, use, disclosure, alteration and destruction and will protect Covered Data and Information and Credentials in its possession and control as it protects its own confidential information of like nature. Such security measures will include authentication controls, encryption of Covered Data and Information while in transit, physical controls or other means in accordance with each party's own information security policy. All Covered Data and Information that may be contained on any hardware or media used in the provision of the E-mail Services will be permanently erased or rendered unreadable prior to disposal of such hardware or media. Microsoft confirms that Covered Data and Information are not



recorded on any backup media. Each party agrees to provide access to its information security policy to the other party upon reasonable request.

- ii. Other Security Measures - Microsoft. Microsoft retains the right to block or otherwise prevent delivery of any type of e-mail or other communication to or from the Microsoft Services as part of Microsoft's efforts to protect its services, protect Microsoft's customers or stop Institution (either itself or through its End Users) from breaching this Agreement; provided, however, Microsoft will notify Institution of any suspended or terminated End User email account as provided for in Section 2.a.iii. Microsoft will take commercially reasonable measures, including regular data integrity audits, to protect Institution and Covered Data and Information against deterioration or degradation of data quality and authenticity. Microsoft will, if requested by Institution to do so, assist Institution in correcting any Personal Information that Institution is unable to correct on its own within a commercially reasonable time of receiving a written request from Institution
- iii. Standards. Institution shall implement security measures in connection with its use of the E-Mail Service and Microsoft shall implement security measures in connection with its provision of the E-Mail Service that meet the following standards:
  1. access to servers used in connection with the E-Mail Service shall be protected via commercially reasonable access control mechanisms and will be limited to a designated set of each party's respective employees or contractors owing confidentiality obligations to such party;
  2. an encryption key or other credentials will be installed on servers used by each party in connection with the E-Mail Service and then the encryption key will be promptly destroyed or locked down in an area of restricted access in a manner reasonably calculated to prevent disclosure of the encryption key other than as necessary for continued operation of the E-Mail Service pursuant to this Agreement Microsoft and the Institution agree to use Public Key Encryption (such as SSL or TLS) for the protection of data while in transit. Microsoft and the institution agree to use a recognized, external, certificate authority to validate their respective identities, and to take commercially reasonable measures to protect their encryption certificates from expiry or unauthorized use. Further, Microsoft and the Institution agree to notify each other promptly upon the recognition of loss of control over, or expiry of, their respective signing certificates; and
  3. commercially reasonable cryptographic protocols to protect information in transmission over the Internet.
- iv. Additional Security Measures. If either party reasonably requests that the other party employ additional security procedures or requirements, then the parties shall discuss the terms of such implementation in good faith. From time to time, upon request of the Institution, Microsoft will meet with representatives of the Institution to review any changes in Microsoft's security standards affecting the E-Mail Service.
- v. Breach of Security by Institution. Institution will immediately report to Microsoft any actual breach of security under this Agreement involving Covered Data and Information under its possession or control, and the parties shall mutually agree on appropriate steps to (i) immediately alleviate any continued threat to the

privacy or security of End Users; and (ii) prevent foreseeable future threats to the security or privacy of Microsoft, Institution and/or End Users.

- vi. Unauthorized Disclosures or Misuse of Covered Data and Information. Microsoft shall, within a commercially reasonable period of time promptly after discovery of any unauthorized or unlawful access to, loss or disclosure or alteration of or malicious compromise of any Covered Data and Information in its possession or control (a "**Security Incident**"):
1. notify Institution of the Security Incident;
  2. investigate the Security Incident and provide Institution with detailed information about the same;
  3. provide reasonable assistance to Institution to the extent necessary to enable Institution to comply with applicable law implicated by the Security Incident;
  4. take steps to mitigate the effects and minimize the damage resulting from the Security Incident; and
  5. make changes to minimize the likelihood that the Security Incident will re-occur.
- vii. Unsuccessful Security Incidents. For purposes of clarification, the parties agree that an unsuccessful security incident will not be subject to this Section. An unsuccessful security incident is one that results in no unauthorized access to or loss or disclosure or alteration of (a) Covered Data and Information, (b) data provided by Institution or End Users to Microsoft through the Institution's or End Users' use of the E-Mail Service or (c) a Microsoft server holding such data. This includes, 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.
- viii. Annual Cap. For a Security Incident caused by Microsoft's or its subcontractors' breach of Microsoft's or its subcontractors' data security obligations under this Agreement, Microsoft agrees to reimburse Institution for up to the Security Incident Cap in costs and expenses that Institution reasonably assumes or expends to identify and mitigate the effects of the Security Breach, including, but not limited to, Institution's decision to notify affected individuals; provided that Institution will coordinate efforts with Microsoft to reduce costs as may be reasonable under the circumstances.

The reimbursement set forth above shall be subject to an annual cap (the "**Security Incident Cap**"). At the beginning of each Contract Year the Security Incident Cap shall be set at \$100,000 CDN. The CDN Security Incident Cap for each Contract Year is the maximum aggregate limitation of liability of Microsoft for any and all Security Incidents caused by Microsoft or its subcontractors that occur during that Contract Year. However, in no event shall any portion of the unused Security Incident Cap for any Contract Year be applied to any Security Breaches occurring in subsequent Contract Years. The applicable Security Incident Cap is determined based on when the Security Incident(s) occurred.

- ix. Microsoft Access to Generated Data. Institution agrees that Microsoft may access any data that was generated by Microsoft on behalf of Institution, and that such access will not be deemed a Security Incident. The aforementioned data include, without limitation, log files, usage related data and similar data that does not include Personal Information (excluding IP addresses).
- x. No Acknowledgement by Microsoft. Further, the parties agree that Microsoft's obligation to report or otherwise respond to a Security Incident under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability regarding the Security Incident.
- d. No Illegal or Adverse Use. Institution will use commercially reasonable efforts to not allow End Users to use the E-Mail Service to transmit, sell, license or deliver any infringing, defamatory or illegal product or service, or allow End Users to use the E-Mail Service in any manner that threatens the integrity, performance or availability of the E-Mail Service. Such commercially reasonable efforts shall consist of prohibiting the End User activities described in this Section 4.d by means of requiring End User acceptance of Institution's policy for the use by its End Users of the E-Mail Service and by suspending or terminating the accounts of End Users who the Institution believes to be violating such policy.
- e. Disclosure of Personal Information. In order to operate and provide the Microsoft Services, Microsoft may collect Personal Information about End Users as provided for under this Agreement. Microsoft may access or disclose Institution or End User information, including the content of End User communications, in order to: (1) comply with the law or respond to lawful requests or legal process; (2) take action or pursue other remedies against suspected purveyors of spam, viruses, malware, phishing or other attacks that have in any manner materially disrupted or diminished, or may in the future in any manner materially disrupt or diminish, Microsoft's services; or (3) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of any individuals from a life threatening emergency. Solely with respect to any disclosure made pursuant to subsection (1) above, Microsoft will use commercially reasonable efforts , to provide Institution notice, when legally permissible to do so, that a demand for Institution and/or End User information has been made, prior to the disclosure of any such information. In any instance where Microsoft is prohibited by law from providing notice, Microsoft will comply with any such lawful request or legal process demanding Institution and/or End User information. Solely with respect to any disclosure made pursuant to subsections (2) and (3) above, Microsoft will provide Institution notice, within a commercially reasonable amount of time that a disclosure has been made of Institution and/or End User information.
- f. Collection of Service Data. In order to provide the Microsoft Services, Microsoft may collect certain information about Microsoft Service performance, End Users' computers (such as, the browsers they use), and Microsoft Service use. For greater certainty Microsoft agrees that is shall not collect any personal information of End Users other than as permitted pursuant to this Agreement.
- g. International Transfer of Personal Information. Personal information collected through the Microsoft Services may be stored and processed in the United States or any other country in which Microsoft or its affiliates, subsidiaries or agents maintain facilities. Institution shall notify all End Users, to any such transfer of information outside of the country in which such information is collected. Microsoft abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data from the European Union.

- h. Ownership. Microsoft and its licensors will retain all right, title, and interest in and to the Microsoft Services the Deployment Tools, and all other content, documentation, technology, software, materials and services Microsoft owns and makes available to Institution or any End User by Microsoft to create, manage, modify, store, delete, or authenticate End Users' Windows Live IDs and/or access to Microsoft Consumer Services (collectively "**Microsoft Tools**") pursuant to this Agreement, including, but not limited to, any Microsoft Tools made available to Institution via web site currently located at the URL <http://domains.live.com>, or any successor URL. Institution, its licensors, End Users or third parties will retain all right, title and interest in and to the Institution Domains, all Covered Data and Information, content, technology, materials and services delivered or forwarded to Microsoft by Institution under this Agreement.
- i. Requests for Access. Institution will assist End Users who contact Institution with access to and correction of End Users' Personal Information. . If Microsoft receives a request from an individual for:
- i. access to his/her Personal Information; or
  - ii. the correction of his/her Personal Information,
- Microsoft will advise the individual to make his/her request to Institution.
- j. Requests by Institution's Privacy Officer. At any time as directed by Institution, Microsoft will provide copies of the Personal Information (not otherwise available to the Institution through the administrative tools provided by Microsoft) to Institution's designated Privacy Officer. Microsoft will using commercially reasonable efforts respond promptly to such requests and, where such requests are made for the purposes of fulfilling Institution's obligations under the *Freedom of Information and Protection of Privacy Act* (Ontario) and other applicable law, Microsoft will use commercially reasonable efforts to assist Institution in complying with such obligations.
- k. SAS Type II Reports. Microsoft shall cause its external auditors to provide to Institution a SAS 70 Type II report (or equivalent) annually throughout the term of the Agreement on the design, existence, effective operation and continuity of Microsoft's control procedures in respect of the data centers used to provide the E-Mail Service, including identification, authentication, authorization and monitoring functions that Microsoft has control over. Where the SAS 70 Type II report identifies material deficiencies in the data centers used in the performance of the E-Mail Service, Microsoft shall provide to Institution a remedial plan to address such deficiencies and shall report to Institution on the progress made in executing such plan.

## 5. **Trademarks.**

- a. Institution Marks. If Institution elects to use the branding service offered by Microsoft, then Institution consents to the use by Microsoft of the trademarks and logos Institution provides to Microsoft ("**Institution Marks**") only for the purpose of the operation by Microsoft of the co-branded E-Mail Service and, if Institution elects, other co-branded Microsoft Consumer Services as such services are made available by Microsoft. Institution warrants that the Institution Marks provided do not infringe any copyright, trademark, or other proprietary right held by any third party enforceable in Canada. Institution also warrants that it is not aware of any claims regarding the Institution Marks in Canada.
- b. Microsoft Marks. If Institution elects to use the branding service offered by Microsoft, Microsoft grants to the Institution a worldwide, royalty free non-exclusive license to use

the Microsoft trade-marks provided by Microsoft to Institution for the purpose of operating and Advertising the E-Mail Service and any additional co-branded Microsoft Consumer Services agreed by Institution and Microsoft (the "**Microsoft Marks**"). Microsoft warrants that the Microsoft Marks provided do not infringe any copyright, trademark, or other proprietary right held by any third party enforceable in Canada. Microsoft also warrants that it is not aware of any claims regarding the Microsoft Marks in Canada.

- c. Institution Indemnity. Institution agree to indemnify Microsoft for third party claims that result in any breach of Institutions Marks warranties and third party claims that Microsoft's use of the Institution Marks violates such third party's rights enforceable in Canada.
- d. Press Releases. Neither party will issue a press release pertaining to this Agreement without the other party's prior written approval. However, Microsoft may include factual reference to Institution's name in public lists of current customers of the E-Mail Service in marketing materials and discussions with potential customers for the E-Mail Service, including a general public announcement of Institution and Microsoft entering into this Agreement for the E-Mail Service.

**6. Disclaimer of warranties.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL INFORMATION, MATERIALS, SOFTWARE OR SERVICES ARE PROVIDED BY MICROSOFT AND ITS SUPPLIERS (COLLECTIVELY, "**MICROSOFT DELIVERABLES**") ON AN "AS IS" BASIS AND MICROSOFT AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES WITH RESPECT TO THE MICROSOFT DELIVERABLES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, OR RESULTS TO BE OBTAINED BY INSTITUTION AND END USERS IN CONNECTION WITH THE USE OF THE E-MAIL SERVICE.

**7. Limitations of Liability.**

- a. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL MICROSOFT OR ITS SUPPLIERS OR INSTITUTION BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE ANY MICROSOFT SERVICE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.
- b. THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO TEN THOUSAND DOLLARS EXCEPT FOR: (A) INSTITUTION'S OR MICROSOFT'S OBLIGATIONS UNDER SECTION 5 (TRADEMARKS), (B) MICROSOFT'S OBLIGATIONS UNDER SECTION 11 (DEFENSE OF INFRINGEMENT) AND REIMBURSEMENT OBLIGATIONS UNDER SECTION 4.c.viii (THE SECURITY INCIDENT CAP), OR (C) A PARTY'S LIABILITY FOR ITS WILLFUL MISCONDUCT.

**8. Term, Termination and Amendments.**

- a. Term. Unless terminated earlier under Section 10.b, this Agreement is effective as of the Effective Date and expires two (2) years after the Effective Date (the "**Term**"); provided that the Term automatically renews for additional one (1) year periods unless either party

provides written notice of termination to the other party at least one hundred twenty (120) days prior to the end of the then-current Term.

- b. Termination for Convenience. Institution may terminate this Agreement for any reason upon thirty (30) days written notice to Microsoft.
- c. Termination for Cause. Either party may immediately terminate or suspend this Agreement if the other party is in material breach of any material warranty, representation, term, condition or covenant of this Agreement and fails to cure that breach within thirty (30) days after written notice or such longer time period as the parties mutually agree.
- d. Survival, Transition Period. In the event of termination or expiration of the Agreement for any reason, Sections 6, 7, 8.d, 9, 10, and 11, the applicable nondisclosure provisions and the requirement in Section 4.c.i. to permanently erase or render unreadable any Covered Data and Information that may be contained on any hardware or media that was used to provide the E-mail Services, will survive and Institution shall cease using the E-Mail Service, and return to Microsoft all full or partial copies of software, documentation and materials provided by Microsoft under this Agreement for the E-Mail Service, except, however, the Institution may retain one copy for archival purposes. Microsoft will provide Institution with industry standard interfaces and protocols to enable Institution, at any time, to extract all Covered Data and Information, and, upon request, Microsoft shall destroy or return to Institution all Covered Data and Information, content, technology and materials forwarded to Microsoft by Institution or its End Users under this Agreement within a commercially reasonable time. To the extent Microsoft is required by law to retain a copy of any Covered Data and Information, it will do so and such Covered Data and Information will continue to be subject to the terms of this Agreement. Institution may ask Microsoft to prepare a proposal for additional services for an additional fee. Any such additional for-fee services will be provided on terms and conditions mutually agreed by the parties. Upon request of Institution, as set forth in Institution's specific transition assistance plan (if applicable), Microsoft will continue to provide the Services on a "steady state" basis for up to the entire duration of a mutually agreed upon transition period.
- e. Amendments. Microsoft reserves the right to make changes to this Agreement from time to time in Microsoft's sole discretion; provided, however, at least 90 days before any material change to this Agreement takes place, Microsoft will give Institution notice of such changes. If Institution provides notice within such 90 day period that it does not agree to such changes, then Institution's use of the E-Mail Services shall continue under the terms of this Agreement without such changes. Otherwise Institution's use of the E-Mail Service shall continue under the revised version of this Agreement Microsoft reserves the right to change the E-Mail Services, including the description of the E-mail Services set forth in this Agreement. However, any changes of the E-Mail Services under this Agreement will be consistent with the changes to the E-Mail Services Microsoft makes for all of its other Live@edu customers.
- f. Transition Support. Microsoft will manage the transition from Live@edu E-Mail Services to Office 365 online services within Microsoft's data centers at no charge to Institution. Microsoft in its sole discretion will determine when to begin making transitions and will then offer transition date options to Institution. If Institution requires assistance with transition on Institution's premises, then Microsoft will provide commercially reasonable assistance to Institution on the same terms Microsoft offers to other customers once they become generally available for higher education. There will be separate agreements for (a) Office 365 online services and (b) any resulting deployment of the Office 365 online services by Microsoft or a third party.

**9. 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, plans and promotions and all personally identifiable information about End Users, and it includes the negotiated terms and conditions of this Agreement, including without limitation, the liability terms and caps provided for above, except to the extent that such information is required to be disclosed by law applicable to the disclosing party. All beta releases are confidential unless excepted below. Confidential information does not include information that: (i) the recipient developed independently; (ii) the recipient knew before receiving it; 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 the term of this Agreement and a period of five (5) years thereafter, 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 required by law, in which case the disclosing party will use its best efforts to give the other party notice of the requirement so the disclosure can be contested. For Personal Information, there is no five (5) years limitation. Personal Information will be protected for so long as it is required by applicable laws.

Safeguarding confidential information. Each party will take reasonable precautions to safeguard the other's confidential information in its possession or control. Such precautions will be at least as great as those the party takes to protect its own confidential information of like nature. Each party will disclose the other's confidential information to its 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 this Agreement, each party will return it to the other or destroy it at the other's request. As of the Effective Date, the Microsoft data centres delivering the E-Mail Services have achieved the following certifications: ISO 27001, SAS70 Type II, and FISMA ATO.

- c. Feedback. Institution may provide to Microsoft suggestions, comments or other feedback with respect to Microsoft's confidential information or the Microsoft Services. Feedback is voluntary and Microsoft is not required to hold it in confidence except that any general public release of such feedback that specifically identifies the Institution with respect to that feedback requires the prior written consent of Institution. Feedback may be used by Microsoft for any purpose without disclosure obligation of any kind.
- d. Cooperation in the event of disclosure. Each party 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 unless specifically instructed by Institution not to do so.

**10. Miscellaneous.**

- a. Not an Offer. This Agreement does not constitute an offer by Microsoft and it will not be effective until accepted by an authorized representative of each party.
- b. Representations and Warranties. Each party represents and warrants as follows: (i) it has full power and authority to enter into this Agreement and to carry out the provisions

hereof, (ii) it is duly authorized to accept this Agreement and to perform its obligations hereunder, (iii) this Agreement is a legal and valid obligation binding upon it and enforceable according to its terms, and (iv) the acceptance and performance of this Agreement by it does not conflict with any agreement to which it is a party or by which it may be bound. Institution further represents and warrants that it has obtained all legal permissions on behalf of parents or guardians of End Users who are not of the age of majority as set forth in Section 2.d.iii for such End Users to use the Microsoft Services as contemplated by this Agreement. Such permission shall specifically authorize Microsoft, as contemplated by this Agreement, to provide End Users with access to the E-Mail Service; and to collect, use and disclose Personal Information from End Users strictly as set forth in this Agreement (e.g., as necessary to provide and improve the E-Mail Service to such End Users, as required by law, or in a life threatening emergency); and for Windows Live Messenger to receive and send notices and marketing materials to End Users.

- c. Assignment. This Agreement may not be assigned by either party without the written consent of the other party, except that Microsoft may assign this Agreement to an entity owned or controlled by Microsoft that agrees in writing to be bound by the provisions of this Agreement. For purposes of this Section, the term "assignment" includes any change in control transaction, such as a merger or acquisition of substantially all the shares or assets or control of a party to this Agreement. An assignment will not relieve the assigning party of its obligations under this Agreement.
- d. Severability. If a court of competent jurisdiction 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.
- e. Waiver. No waiver of any breach of this Agreement will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
- f. 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 (a "**Force Majeure Event**") no longer exists. Institution shall have the right to terminate this Agreement for any Force Majeure Event affecting the provision of the E-Mail Service for 30 days or more.
- g. Applicable Law and Jurisdiction. This Agreement will be construed and controlled by the laws of the Province of Ontario and the federal laws of Canada applicable therein. Process may be served on either party in the manner authorized by applicable law or court rule.
- h. Notices. Notices concerning this Agreement must be sent by post, express courier, facsimile or e-mail to the signatories or in the case of Institution, Institution's IT administrator currently on record with Microsoft. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or e-mail confirmation of delivery.
- i. Interpretation. The headings used in this Agreement and its division into articles, sections, schedules, and other subdivisions do not affect its interpretation. References in this Agreement to articles, sections, schedules, and other subdivisions are to those parts of this Agreement. Unless the context requires otherwise, words importing the singular number include the plural and *vice versa*; words importing gender include all genders.



- j. Legislation. Microsoft acknowledges that the Institution is subject to the *Ontarians with Disabilities Act, 2001* and the *Accessibility for Ontarians with Disabilities Act, 2005*, and that, as a result, the Institution is under a statutory obligation to prepare an annual accessibility plan to identify, remove and prevent barriers to persons with disabilities in respect of services received by such persons from the Institution. Microsoft will work with the Institution in good faith to identify, remove and prevent barriers for persons with disabilities in respect the E-Mail Service in a manner consistent with Microsoft's company-wide efforts to make its products and services available to those with disabilities.

**11. Defense of Claims by Microsoft.**

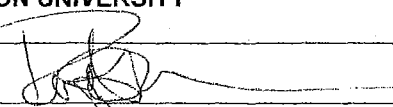
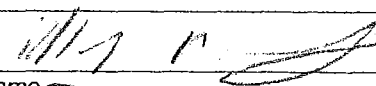
- a. Agreement to Protect. Subject to Sections 11.b. and 11.c. below, Microsoft will defend Institution against any claim made by a third party (other than an Institution affiliate) that alleges that the Microsoft Services and/or any Microsoft Marks as provided by Microsoft and used in accordance with this Agreement, infringe that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret or undisclosed information (an "**Infringement Claim**"). Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). For purposes of this section, the term "undisclosed information" means information having the characteristics set forth in Article 39.2 of the TRIPs agreement as necessary to qualify for protection under Article 39.1 of the TRIPs agreement.
- b. What Institution Must Do. Institution must notify Microsoft promptly in writing of the Infringement Claim and give Microsoft sole control over its defense or settlement. Institution must also provide Microsoft with reasonable assistance in defending the Infringement Claim. Microsoft will reimburse Institution for reasonable out-of-pocket expenses that it incurs in providing this assistance.
- c. Limitations on Defense and Payment Obligation for Infringement Claims. Microsoft's obligations for Infringement Claims under this Section 11 will not apply to the extent that the claim or award is based on:
- i. Institution or End Users owned or provided information, code or materials;
  - ii. Institution's continuing use of the Microsoft Services following Microsoft providing Institution written notice to discontinue use of the Microsoft Services;
  - iii. Institution's combined use of the Microsoft Services with any information, code or materials provided by Institution or any a non-Microsoft product, service, data or business process, to the extent the combination causes the Infringement Claim;
  - iv. damages attributable to the value of the use of a product, service, data or business process not provided to the Institution by Microsoft; or
  - v. any use of the Microsoft Services in violation of this Agreement to the extent the violation gives rise to the Infringement Claim.
- d. Specific Rights and Remedies in Case of Infringement.
- i. Microsoft's rights in addressing possible infringement. If Microsoft receives information concerning an Infringement Claim, Microsoft may, at its expense and without obligation to do so, either:

1. procure for Institution the right to continue to use the Microsoft Services;  
or
  2. replace the Microsoft Services with a functional equivalent; or
  3. modify the Microsoft Services to make them non-infringing and functionally equivalent.
- ii. Institution's specific remedy in case of injunction. If, as the result of an Infringement Claim, Institution's use of the Microsoft Services is enjoined by a court of competent jurisdiction, Microsoft will, at its option, either:
1. procure for Institution the right to continue use of the Microsoft Services;  
or
  2. replace the Microsoft Services with a functional equivalent; or
  3. modify the Microsoft Services to make them non-infringing and functionally equivalent; or
  4. if after using commercially reasonable efforts Microsoft cannot effect any of the options described above, terminate Institution's right to use the Microsoft Services, providing at least 180 days notice to Institution, if possible, or as much notice to Institution as reasonably possible under the circumstances .
- e. Exclusive Remedy. This Section 11 states Institution's exclusive remedy with regard to any Infringement Claim.

**12. Disaster Recovery Plans.**

- a. **Requirement** Microsoft shall be responsible for business continuity and disaster recovery planning, testing, implementation and execution, including as more fully set forth in its then current published documentation for Live@edu.
- b. **Notice of Disaster** Microsoft shall provide immediate written notice to Institution of the occurrence of any actual disaster for which Microsoft invokes its disaster recovery plan.

By signing below the parties agree to be bound by the terms and conditions contained in this Agreement.

Institution Name <b>CARLETON UNIVERSITY</b>	Contracting Microsoft entity <b>MICROSOFT CORPORATION</b>
Signature 	Signature 
Ralph Michaelis	Printed Name Paul Lenehan
CIO	Printed Title Product Manager
Signature Date 15 NOV 2011	Effective Date (date Microsoft countersigns) 11/22/11