

# TERMS AND CONDITIONS FOR THE ONLINE SALE OF MICROSOFT PRODUCTS AND TECHNOLOGY SERVICES

Updated February 20, 2019

This document contains important information regarding your rights and obligations, as well as conditions, limitations, and exclusions that might apply to you. Please read it carefully.

These terms require the use of arbitration to resolve disputes, rather than jury trials.

By placing an order for products or services from this website, you affirm that you are of legal age to enter into this agreement, and you accept and are bound by these terms and conditions. You affirm that if you place an order on behalf of an organization, you have the legal authority to bind such organization to these terms.

You may not order products or services from this website if you (i) do not agree to these terms; (ii) are not at least 18 years of age; or (iii) are prohibited from using this website or any products or services by applicable law.

**1. Agreement to Terms.** These terms and conditions (these "**Terms**") apply to the purchase and sale of Microsoft products and other technology services through [cloud.techsoup.org](http://cloud.techsoup.org) (the "**Site**"). These Terms are subject to change by TechSoup Global (referred to as "**TechSoup**", "**us**", "**we**", or "**our**" as the context may require) without prior written notice at any time, in our sole discretion. Any changes to these Terms will be in effect as of the "Last Updated Date" referenced on the Site. You should review these Terms prior to purchasing products or services through this Site. Your continued use of this Site after the "Last Updated Date" will constitute your acceptance of and agreement to such changes. These Terms are an integral part of the [Website Terms of Use](#) that apply generally to the use of our Site. You should also carefully review our [Privacy Policy](#) before placing an order for products or services through this Site.

**2. Microsoft Cloud Agreement.** You acknowledge that you have received a copy of the [Microsoft Cloud Agreement](#), and that you have read it, understood it, and agree to be bound by its terms. You also agree that we may use the information you submit to us to create an account with Microsoft on your behalf, and that your information will be provided to Microsoft for that purpose.

**3. Right to Access and Modify Your Computer Systems.** You hereby give TechSoup, through one or more of its employees, agents, affiliates, or third party service providers, the right to:

3.1. remotely access your computer systems, computers, software, network devices, servers, phones, tablets, devices, peripherals, an/or any other hardware, systems, or devices (collectively, "**Computer Systems**") covered by the Services;

3.2. remotely access the Microsoft Portal, any hosting account provider, or any other service providers needed to perform the Services, including but not limited to the right to act as your agent for purposes of registering your organization and delivering the Services;

3.3. open, view, modify, edit, delete, or otherwise manipulate your computer software, applications, data, and data storage media including, without limitation, the computer operating system, word processing, spreadsheets, databases, workflow, graphics, audio, video, system drivers and libraries, and any other type of software or data that may be contained on your Computer Systems covered by the Services; and

3.4. download and/or install software or other products on your Computer Systems covered by the Services, including without limitation, memory chips, processor chips, cooling fans, batteries, hard drives, tape drives, storage devices, modem and communication devices, audio and video cards, network interface cards, hubs, routers, switches, printers, scanners, cables, and any other hardware which TechSoup may elect to install.

#### **4. Privacy and Security.**

4.1. TechSoup will collect and process your personal information in accordance with TechSoup's current Privacy Policy, located at [www.techsoup.org/privacy](http://www.techsoup.org/privacy), which may be amended by TechSoup from time to time at its sole discretion and which is incorporated into these Terms by reference. By accepting these Terms, you agree to be bound to the processing of your personal information under the TechSoup Privacy Policy.

4.2. You are responsible to keep your password(s) secure, and you agree not to disclose your passwords to any third party. You are solely responsible for any activity that occurs under your accounts. TechSoup may request temporary use of your password(s) and may retain your password(s) in a secure electronic file related to your account to facilitate provision of the Services. If TechSoup determines that a security breach or suspected fraudulent activity has occurred or is likely to occur with your account, TechSoup may suspend your account until the applicable activity has been verified.

4.3. You acknowledge that you are responsible for updating your passwords when notified by TechSoup. You agree that TechSoup Global shall not be responsible or liable for any loss or damage resulting from your failure to update your password upon notification from TechSoup.

#### **5. Your Representations.** You represent and/or agree to the following:

5.1. You are the authorized representative of an eligible organization (as defined by TechSoup's eligibility guidelines). We may require documents as proof of your organization's legal status, bearing your name and address, as well as other documents to substantiate your authorization to act on behalf of your organization. The information you provide to TechSoup will be reviewed by TechSoup to ensure your organization's eligibility.

5.2. Unless otherwise stated, you are not allowed to transfer, trade, give away, or resell products to separate legal entities or individuals. Additionally, software may not be installed on computers that will be given or sold to other organizations or individuals, even as part of a charitable program. You are not allowed to use any products for raffles, as door prizes, individual awards or any other fundraising activities. Your use of any products will be related to your tax exempt purpose.

5.3. For purposes of these Terms, "Services" means any services that you may purchase or receive from TechSoup, from time to time, including without limitation those Services identified on documentation provided by TechSoup in connection with such purchase. You hereby acknowledge and agree that the Services provided to you by TechSoup will only cover the users and Computer Systems (as defined below) specifically registered with or otherwise authorized by TechSoup for use in connection with the Services, and that TechSoup may discontinue any of the Services from time to time in its sole discretion. If TechSoup's performance of its obligations under these Terms is prevented or delayed by any act or omission of you or your agents, subcontractors, consultants or employees, TechSoup shall not be deemed in breach of its obligations under these Terms or otherwise liable for any costs, charges or losses sustained or incurred by you, in each case, to the extent arising directly or indirectly from such prevention or delay.

5.4. You and your organization's personnel, agents and representatives agree to abide by the obligations imposed by the USA PATRIOT Act, Executive Order 13224, and other regulations dealing with terrorism and individuals and/or groups conducting terrorist activities. Accordingly, you agree that you do not and will not knowingly (i) assist in, (ii) sponsor or provide financial, material, or technology support for,

or (iii) provide financial or other services to or in support of any acts of terrorism or any individuals or groups conducting terrorist activities. You will (i) take commercially reasonable measures and (ii) follow relevant procedures to avoid any such assistance or provision of material support or services for acts of terrorism or to individuals and/or organizations conducting terrorist activities.

5.5. The products, Services, and any related technical data or underlying information (collectively, the “**Controlled Technology**”) are subject to the export and import laws of the United States and other countries. You agree to comply with all export and import laws and regulations, including the U.S. Export Administration Act and its associated regulations. None of the Controlled Technology may be downloaded or otherwise exported or re-exported (a) into (or to a national or resident of) Cuba, North Korea, Iran, Sudan, Syria or any other country subject to U.S. sanctions applicable to the export or re-export of goods; or (b) to anyone on the U.S. Treasury Department’s List of Specially Designated Nationals and Blocked Persons List, or the U.S. Commerce Department’s Denied Persons List, Unverified List, Entity List, or Nonproliferation Sanctions List. By accessing, using or receiving the Controlled Technology, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list, and that you acknowledge you are responsible to obtain any necessary U.S. government authorization to ensure compliance with U.S. law.

5.6. TechSoup is an equal opportunity organization and will not allow discrimination based upon age, ethnicity, ancestry, gender, national origin, disability, race, size, religion, sexual orientation, socioeconomic background, or any other status prohibited by applicable law. Organizations must be willing and able to attest that they do not discriminate on any of the above grounds in order to receive resources from TechSoup. External evidence, such as negative publicity or social media, that reveals such discrimination, hate speech, or disrespectful or bullying behavior, as determined by TechSoup in its sole discretion, may be taken into consideration. TechSoup reserves the right to refuse service to anyone for any reason at any time. Organizations will also be subject to eligibility requirements from donors and other corporate partners who may require agreement to their own anti-discrimination policies.

**6. Order Acceptance and Cancellation.** You agree that your order is an offer to buy, under these Terms, all products and services listed in your order. All orders must be accepted by us or we will not be obligated to sell the products or services to you. We may choose not to accept orders at our sole discretion, even after we send you a confirmation email with your order number and details of the items you have ordered.

## **7. Prices and Payment Terms.**

7.1. All prices, discounts, and promotions posted on this Site are subject to change without notice. The price charged for a product or service will be the price advertised on this Site at the time the order is placed, subject to the terms of any promotions or discounts that may be applicable. It is possible that a product or service will not have an advertised price, in which case we will provide you with a quote in writing (for these products and services, we may also execute an additional contract). The price charged will be clearly stated in your order confirmation email, quote, or contract. Price increases on cloud licenses will only apply to orders placed after the time of the increase. Posted prices do not include taxes or charges for shipping and handling. All such taxes and charges will be added to your total price, and will be itemized in your shopping cart and in your order confirmation email. We strive to display accurate price information, however we may, on occasion, make inadvertent typographical errors, inaccuracies or omissions related to pricing and availability. We reserve the right to correct any errors, inaccuracies, or omissions at any time and to cancel any orders arising from such occurrences.

7.2. You will pay all fees related to your order. Terms of payment are within our sole discretion and payment must be received by us before our acceptance of an order (“**Initial Payment**”) or before we renew an order (“**Renewal Payment**”). For subscription-based services (e.g. monthly fees), we will submit periodic charges without obtaining any further authorization from you, until you provide notice that you

have terminated this authorizations or would like to change your payment method. You will receive an invoice and payment confirmation on your anniversary date (for avoidance of doubt, your anniversary date is the same calendar date of initial execution). If you select an alternative payment method, the Renewal Payment will be due on your anniversary date every month. If the Renewal Payment can't be processed with the credit card on file and/or we do not receive the Renewal Payment, you will have three (3) calendar days to bring the payment current before your subscriptions are to be interrupted. We, in our sole discretion, can terminate your order and/or subscription if you fail to make payment (Initial or Renewal) as required. You represent and warrant that (i) the credit card information you supply to us is true, correct and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including shipping and handling charges and all applicable taxes, if any, regardless of the amount quoted on the Site at the time of your order.

**8. Returns and Refunds.** Except for any products designated on the Site as non-returnable, we will accept a return of the products for a refund of your purchase price, provided such return is made within 30 days of delivery with valid proof of purchase and provided such products are returned in their original condition. Refunds are processed within approximately 3 business days of our receipt of your merchandise. Your refund will be credited back to the same payment method used to make the original purchase on the Site. **WE OFFER NO REFUNDS ON ANY PRODUCTS DESIGNATED ON THIS SITE AS NON-RETURNABLE.**

**9. Additional Service Terms.** You agree to/that:

9.1. cooperate with TechSoup in all matters relating to the Services and appoint an employee to serve as the primary contact with respect to the Services and who will have the authority to act on your behalf with respect to matters pertaining to the Services;

9.2. respond promptly to any TechSoup request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for TechSoup to perform the Services, ensuring that all information is complete and accurate;

9.3. your infrastructure is capable of supporting the Services including, but not limited to, up-to-date software, adequate available resources on desktops, adequate functionality on mail-integrated systems, adequate internet bandwidth, and valid credentials to access resources. You are wholly responsible for purchasing and maintaining physical hardware including servers, networking equipment, external hard drives, and network attached storage devices even when said hardware was provided by TechSoup for the express purpose of supporting the Services.

9.4. all users at your organization are familiar with basic operations on a computer and with standard productivity software, and you have at least one user who has the necessary skills to perform basic password reset and similar administrative functions (TechSoup will provide training as needed);

9.5. TechSoup is not responsible for backup or restore of data outside of the specific migration described in any Services;

9.6. any deliverables will be reviewed for acceptance within five (5) business days of submission;

9.7. unless already specified, all Services, including support for local devices, only apply to services running Windows 7 and Office 2010 or newer for PC or Mac OS 10.6 and Office 2011 for Mac. Only Windows Server 2008R2 and newer servers (no Mac servers) are supported. All physical servers must have a current warranty with the manufacturer. Unwarranted servers will be subject to standard hourly fees in the event of failure/recovery; and

9.8. TechSoup will not be responsible for any services rendered by third parties.

**10. Disclaimer of Warranties.**

10.1. We do not manufacture or control any of the products offered on our Site. Accordingly, we do not provide any warranties with respect to the products offered on our Site.

10.2. ALL PRODUCTS AND SERVICES OFFERED ON THIS SITE ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

10.3. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO YOU.

#### **11. Limitation of Liability.**

11.1. IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THESE TERMS, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

11.2. OUR SOLE AND ENTIRE MAXIMUM LIABILITY, FOR ANY REASON, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY YOU FOR THE PRODUCTS AND SERVICES YOU HAVE ORDERED THROUGH OUR SITE.

**12. Goods Not for Resale or Export.** You represent and warrant that you are buying products or services from the Site for your own use only, and not for resale or export. You further represent and warrant that all purchases are intended for final delivery to locations within the U.S.

**13. Privacy.** We respect your privacy and are committed to protecting it. Our [Privacy Policy](#) governs the processing of all personal data collected from you in connection with your purchase of products or services through the Site.

**14. Force Majeure.** We will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms, for any failure or delay in our performance under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**15. Governing Law and Jurisdiction.** All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California.

**16. Waiver of Jury Trials; Binding Arbitration.**

16.1. YOU AND TECHSOUP GLOBAL ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

16.2. ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING IN ANY WAY TO YOUR PURCHASE OF PRODUCTS OR SERVICES THROUGH THE SITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ON AN INDIVIDUAL BASIS, AND WILL NOT BE CONSOLIDATED IN ANY ARBITRATION WITH ANY CLAIM OF ANY OTHER PARTY.

16.3. The arbitration will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures. The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction. You consent to the arbitration being conducted in the English language and in the county of San Francisco, California. Each party will bear its own costs incurred in such arbitration proceeding.

16.4. If any provision of these arbitration terms is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

**17. Assignment.** You will not assign any of your rights or delegate any of your obligations under these Terms without our prior written consent. Any purported assignment or delegation in violation of this Section 17 is null and void. No assignment or delegation relieves you of any of your obligations under these Terms.

**18. No Waivers.** The failure by us to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of TechSoup Global.

**19. No Third-Party Beneficiaries.** These Terms do not and are not intended to confer any rights or remedies upon any person or entity other than you.

## **20. Notices.**

20.1. To You. We may provide any notice to you under these Terms by: (i) sending a message to the email address you provide or (ii) by posting to the Site. Notices sent by email will be effective when we send the email and notices we provide by posting will be effective upon posting. It is your responsibility to keep your email address current.

20.2. To Us. To give us notice under these Terms, you must contact us by personal delivery, overnight courier or registered or certified mail to TechSoup Global, 435 Brannan Street, Suite 100, San Francisco, CA 94107. We may update the address for notices to us by posting a notice on the Site. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.

**21. Severability.** If any provision of these Terms is invalid, illegal, void or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms.

## Appendix 1 – Microsoft Cloud Agreement

(see: <https://docs.microsoft.com/en-us/partner-center/agreements> for updates)