

IPsoft Reseller Terms & Conditions

Applicable as part of the IPsoft Partner Program

Last Updated: 2018 August 29

These IPsoft Reseller Terms & Conditions (the "**Reseller T&Cs**") are between the applicable reseller ("**you**" or "**Partner**"), and the applicable IPsoft entity ("**IPsoft**") and is only applicable if you are an active partner in the IPsoft Partner Program. If you are agreeing to these Reseller T&Cs not as an individual but on behalf of your company, then "Partner" or "you" means your company, and you are binding your company to these Reseller T&Cs.

For convenience and consistency, however, the definitions of certain terms related to our products and services will be the same as those in the IPPA.

These Reseller T&Cs do not have to be signed in order to be binding. You indicate your assent to the terms by signing the IPsoft Partner Program Agreement ("IPPA") or the applicable Reseller Order.

1. Order Requirements.

To the extent that we make Products available for resale, you may order such Products for resale by following the directions set forth in your IPsoft Partner Program Agreement ("IPPA"). You must provide all of the requested information including, without limitation, the identity of the End Customer company, the End Customer's business address and corporate email addresses, and the specific Software licenses, Services or other Products to be resold in your order ("**Reseller Order**"). All such information must be accurate and complete and must reflect bona fide orders you intend to distribute to End Customers.

2. Limited Right to Resell.

Subject to this Reseller T&Cs, we grant you a one-time, non-exclusive, non-transferable right to resell the Products specified in your Reseller Order to the End Customer specified in the Reseller Order, solely for use by such End Customer in accordance with the IPsoft End Customer T&Cs. This right to resell does not apply to any other End Customer or Products (including without limitation any sale to any related party, organization or affiliate, or to any subsequent, additional or renewal sale to the same party).

IPsoft will make, unless otherwise agreed in the Order Form, Backline Support available to Reseller. Backline Support is defined and described in Annex 1 to these Reseller T&Cs.

3. Enforcement of IPsoft End Customer T&Cs.

3.1. End Customer Terms & Conditions.

All use of the Products by End Customers is subject to the IPsoft End Customer T&Cs, and you may not purport to impose any other terms pertaining to their use of the Products. You are responsible for ensuring that each End Customer enters into the IPsoft End Customer T&Cs (which includes all limitations on Authorized Users and other quantity restrictions applicable to the End Customer's order) in a manner that is legally binding upon the End Customer. This may require you to (a) notify each End Customer that IPsoft products are subject to the IPsoft End Customer T&Cs and that by placing an order with Reseller the End Customer agrees to the IPsoft End Customer T&Cs, (b) include either a copy of or link to the IPsoft End Customer T&Cs in each quotation and order form you issue to the End Customer, and (c) obtain from each End Customer written confirmation of acceptance of the IPsoft End Customer T&Cs prior to the earlier to occur of acceptance of the order by Reseller or delivery of the Product. You must provide evidence of such acceptance by the End Customer to IPsoft upon request.

3.2. Enforcement Cooperation.

You agree to immediately notify us of any known or suspected breach of the IPsoft End Customer T&Cs or other unauthorized use of the Products and to assist us in the enforcement of the terms of the IPsoft End Customer T&Cs.

4. Identification as Reseller.

Subject to this Reseller T&Cs, you are permitted to identify yourself as an IPsoft "Reseller" solely in connection with your resales of Products. You may not use any IPsoft trademark, logo or service mark ("**IPsoft Marks**") except as permitted by IPsoft's Trademark Guidelines. All goodwill arising from your use of IPsoft Marks inures to the benefit of IPsoft.

5. Payment and Delivery.

5.1. Fees.

Your non-refundable, non-cancelable payment to IPsoft is due when you submit your Reseller Order.

5.2. Delivery.

Upon receipt of payment, we will deliver the applicable Product (for example, Software download information, Hosted Services credentials, or other information necessary for End Customers to use or access the applicable Products directly to the delivery contact specified in the Reseller Order and in accordance with our standard delivery procedures. If we deliver the Software or logins to you, you agree that you will, in turn, deliver them directly to the End Customer specified in the Reseller Order, and not to use or access the Software, Hosted Services, or other Products in any way. You must delete the Software promptly thereafter.

5.3. Taxes.

Payments made by you under this Reseller T&Cs exclude any taxes or duties payable in respect of the Products in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by IPsoft, you must pay to IPsoft the amount of such taxes or duties in addition to any fees owed under this Reseller T&Cs. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to IPsoft any such exemption information, and IPsoft will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

5.4. End Customer Pricing and Payment; Refunds.

You will independently set your own pricing to each End Customer. You bear all risk of non-payment by End Customers, and you are solely responsible for all of your costs and expenses. You may not terminate a Reseller Order or receive any refunds due to non-payment by an End Customer. If IPsoft provides any refund to an End Customer under our standard return policy, IPsoft, at its option, will refund the applicable amounts either directly to the End Customer or to you for distribution to the End Customer. You agree to cooperate with IPsoft in connection with any such refund.

6. Feedback.

If you provide any feedback, comments, suggestions, ideas, description of processes, or other information to us about or in connection with the Products or our Reseller program, including without limitation any ideas, concepts, know-how or techniques contained therein ("**Feedback**"), then you grant us a worldwide, royalty-free, non-exclusive, perpetual, and irrevocable license to use, copy, modify, and otherwise exploit the Feedback for any purpose, without any compensation to you or any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed your Confidential Information, and nothing in this Reseller T&Cs (including without limitation Section 12 (Confidentiality)) limits IPsoft's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

7. No Use Rights; IPsoft Reserved Rights.

Only the End Customer of the Products (and its Authorized Users) may use the Products. You are not permitted to use any Products resold under this Reseller T&Cs for your own benefit. To the extent that you nevertheless gain any access to the Products, all license restrictions in the IPsoft End Customer T&Cs apply to you. Notwithstanding anything to the contrary contained in this Reseller T&Cs, except for the limited resale right in Section 2 above, IPsoft and its suppliers have and will retain all rights, title and interest (including without limitation all patent, copyright, trademark, trade secret and other intellectual property rights) in and to all Products, service descriptions, documentation, and underlying technology ("**IPsoft Technology**"), and all copies, modifications and derivative works thereof, including without limitation as may incorporate Feedback. You acknowledge that you are obtaining only a limited right to resell the Products and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Reseller T&Cs or otherwise.

8. Reseller Obligations and Liability.

8.1. End Customer Relationships; Business Practices.

You agree not to represent yourself as an agent or employee of IPsoft and agree that we will have primary control over any End Customer communication regarding the Products once you submit a Reseller Order. You will not make any representations regarding IPsoft, on IPsoft's behalf, or about any Products. You agree not to engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to IPsoft or its products and agree to comply with all applicable federal, state and local laws and regulations while operating under this Reseller T&Cs, including without limitation the U.S. Foreign Corrupt Practices Act and any similar laws or regulations in any applicable jurisdiction. You further agree to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

8.2. Indemnity.

You are fully responsible for all liabilities and expenses of any type whatsoever that may arise on account of your resale of Products. You will indemnify, hold harmless, and (at IPsoft's option) defend IPsoft from and against any claim, loss, cost, liability, or damage, including attorneys' fees, for which IPsoft becomes liable arising from or relating to: (a) any breach or alleged by you of any term of these Reseller T&Cs, (b) the issuance by you of any warranty or representation regarding IPsoft or its products or services not specified in the IPsoft End Customer T&Cs, or (c) any of your other acts or omissions in connection with the marketing or resale of the Products under this Reseller T&Cs.

9. Termination.

9.1. Termination.

We may terminate this Reseller T&Cs if you materially breach any provision in this Reseller T&Cs and fail to cure such breach within five (5) days of written notice of such breach. In addition, either party may terminate this Reseller T&Cs for any reason or no reason upon thirty (30) days' written notice to the other party. IPsoft may also terminate this Reseller T&Cs immediately upon notice to you if (a) it ceases to offer the current Reseller program or (b) it reasonably believes that continuing hereunder could result in business or legal liability for IPsoft or otherwise harm IPsoft or its End Customers.

9.2. Effect of Termination.

You expressly agree that IPsoft will have no obligation or liability to you resulting from termination or expiration of this Reseller T&Cs in accordance with its terms. Upon termination or expiration of this Reseller T&Cs: (a) you must immediately cease identifying yourself as an IPsoft Reseller and using IPsoft Marks in connection with your resale activities hereunder, (b) you must destroy all Confidential Information in your possession and certify destruction (unless we request that you return such materials to us) and (c) Sections 5 (Payment and

Delivery) (but only with respect to Reseller Orders completed during the Term), 6 (Feedback) and 8 (No Use Rights; IPsoft Reserved Rights) through 15 (General) will survive.

10. Changes to the Reseller T&Cs.

From time to time, we may modify this Reseller T&Cs. The version of this Reseller T&Cs in place at the time you submit each Reseller Order is the version that will govern such order. We will use reasonable efforts to notify you of these changes through communications through our website or other forms of communication, but we also suggest that you bookmark these Reseller T&Cs and read them periodically.

11. Confidentiality.

Except as otherwise set forth in these Reseller T&Cs, each party agrees that all code, inventions, know-how, business, technical and financial information it obtains (as "**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. IPsoft source code, IPsoft technology, and any performance information relating to the Products shall be deemed Confidential Information of IPsoft without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

12. IPsoft Commitments; DISCLAIMER OF WARRANTIES.

For the avoidance of doubt, any and all commitments, indemnities, and other terms and conditions offered by IPsoft with respect to use of the Products are made directly by IPsoft to the End Customer in accordance with the IPsoft End Customer T&Cs and do not extend to you as a Reseller. We make NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, TO you as a RESELLER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE AND NON-INFRINGEMENT.

13. LIMITATION OF LIABILITY.

13.1. Waiver of Consequential Damages.

TO THE FULLEST EXTENT ALLOWED BY LAW, NEITHER IPSOFT NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

13.2. Liability Cap.

TO THE FULLEST EXTENT ALLOWED BY LAW, IPSOFT'S AND ITS THIRD-PARTY SUPPLIERS' ENTIRE LIABILITY UNDER THIS RESELLER AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY RESELLER TO IPSOFT IN RESPECT OF THE RESELLER ORDER THAT IS THE SUBJECT OF THIS RESELLER AGREEMENT.

14. Dispute Resolution; Governing Law

14.1. Dispute Resolution; Arbitration.

In the event of any controversy or claim arising out of or relating to this Reseller T&Cs, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach a settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Reseller T&Cs shall proceed to binding arbitration as described in the IPsoft Partner Program Agreement, Appendix B.

14.2. Governing Law; Jurisdiction.

This Reseller T&Cs will be governed by and construed in accordance with the applicable laws of the State of New York, USA, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions of Section 15.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in New York County, New York State, United States of America, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in New York County, New York State, United States of America, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, IPsoft may bring a claim for equitable relief in any court with proper jurisdiction.

14.3. Injunctive Relief; Enforcement.

Notwithstanding the provisions of this Section 15, nothing in these Reseller T&Cs shall prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

14.4. Exclusion of UN Convention and UCITA.

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to these Reseller T&Cs. The Uniform Computer Information Transactions Act (UCITA) shall not apply to these Reseller T&Cs regardless of when or where adopted.

15. Government End Customers.

The Products are commercial computer software. If the user or licensee of the Products is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of these Reseller T&Cs in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

16. General.

These Reseller T&Cs is the entire agreement between you and IPsoft relating to the resale of IPsoft products as described in these Reseller T&Cs and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Products or any other subject matter covered by these Reseller T&Cs. If any provision of these Reseller T&Cs is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. These Reseller T&Cs may not be modified or amended except as described in Section 11 (Changes to Agreement) or otherwise with the written agreement of IPsoft (which may be withheld in its complete discretion without any requirement to provide reasons). As used herein, "including" (and its variants) means "including without limitation" (and its variants). If either party to these Reseller T&Cs breaches any provision of this Reseller T&Cs relating to Confidential Information or intellectual property rights, there may not be an adequate remedy available solely at law; therefore, an injunction, specific

performance or other form of equitable relief or monetary damages or any combination thereof may be sought by the injured party to these Reseller T&Cs. No failure or delay by the injured party to these Reseller T&Cs in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. The parties are independent contractors. These Reseller T&Cs shall not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give on party the express or implied right, power, or authority to create any duty or obligation of the other party.

Should you have any questions concerning these Reseller T&Cs, or if you desire to contact IPsoft for any reason, please contact us at partners@ipsoft.com.

Annex 1: Backline Support

Partner shall contract directly with each End Customer to provide support and maintenance services with respect to the IPsoft Software and/or Hosted Services resold by Partner. IPsoft shall make Backline Support (as described in this Annex 1) available to Partner if Partner has paid IPsoft the applicable Fees with respect to each such supported End Customer.

The terms of Backline Support are as follows:

1. **Support.** IPsoft shall provide IPsoft's Standard Maintenance and Support (or, if purchased, Enhanced Maintenance and Support) service as selected in the Order directly to Partner subject to the following:
 - a. IPsoft shall only be required to provide Partner with Tier 3 (as defined below) Customer Support. Partner shall perform all Tier 1 and Tier 2 support, including without limitation all necessary initial problem analysis, diagnosis, and replication of the problem prior to contacting IPsoft. IPsoft shall provide the Tier 3 support and communicate with only up to three (3) designated support technicians of Partner, each of which who must have taken and passed IPsoft's training programs ("Named Contacts").
 - b. IPsoft will not be obligated to provide any Customer Support to or otherwise communicate directly with any End Customer, unless IPsoft, in its sole discretion, elects to do so. Partner shall direct End Customer to only contact Partner.
 - c. IPsoft shall provide Partner with Updates to the IPsoft Software and/or Hosted Services as they become generally available to the customers of IPsoft; however, Partner may provide Updates solely to End Customers with respect to which Partner has paid IPsoft the applicable License Fee.
2. **Definitions.**
 - a. Tier 1: means helpline (phone and email) support, which includes problem intake and general guidance in use of major features of the IPsoft Software and/or Hosted Services.
 - b. Tier 2: means next level guidance in the IPsoft Software and/or Hosted Services and problem resolution, including general problem diagnosis, provision of known workarounds and resolutions, further internal escalation and fault ticket filing and communication with IPsoft support as necessary.
 - c. Tier 3: means code-level assistance in resolving Errors in the IPsoft Software and/or Hosted Services provided by IPsoft support technicians directly to Partner.