

MICROSOFT DEVICE SERVICE TERMS AND CONDITIONS

SECTION 20 CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IF YOU LIVE IN (OR IF A BUSINESS YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE UNITED STATES. IT AFFECTS YOUR RIGHTS ABOUT HOW TO RESOLVE A DISPUTE WITH MICROSOFT. PLEASE READ IT.

1. INTRODUCTION

If you submit a request for service (the "Service") for your Microsoft manufactured device ("Microsoft Device(s)"), you accept and agree to these Service Terms and Conditions and any other applicable terms, conditions, policies or disclaimers found on <http://support.microsoft.com> (the "Agreement"). We encourage you to read these terms carefully. These terms apply to Service for all Microsoft Devices.

IF YOU DO NOT AGREE TO THESE MICROSOFT DEVICE SERVICE TERMS AND CONDITIONS, PLEASE DO NOT SUBMIT A REQUEST FOR SERVICE.

2. MODIFICATION OF MICROSOFT DEVICE SERVICE TERMS AND CONDITIONS

At any time, Microsoft may update the Microsoft Device Service Terms and Conditions without providing you notice. You are responsible for understanding these terms and conditions before submitting a new service request; if you continue to use the website and/or submit a Service order, you will have agreed to the amended terms. Updates apply only to Service orders submitted after the update was posted.

3. WARRANTY AND EXTENDED SERVICE PLAN COVERAGE

In the event of any conflict between this Agreement and the Microsoft-issued warranty, guarantee or extended service plan for your Microsoft Device, the terms of the Microsoft-issued warranty, guarantee or extended service plan will apply to the Service for your Microsoft Device. Be sure to keep a copy of your proof of purchase for your Microsoft Device. We may require you to provide proof of purchase to us if there is any question as to your Microsoft Device's eligibility for either free of charge warranty service, or extended service plan coverage.

4. LIMITATIONS ON USE BY MINORS

You must be at least 18 years of age to submit a Service order on <http://support.microsoft.com>; if you submit an order, you are responsible for complying with this age requirement.

5. USE OF INFORMATION ABOUT YOU

Microsoft takes care of information about you and your order history according to the terms of the Microsoft [Privacy Statement](#).

6. ACCURACY OF BILLING AND ACCOUNT INFORMATION

When you submit a Service order for your Microsoft Device, you agree to provide current, complete, and accurate payment, account and contact information and to promptly update that information, so that we can complete your transaction and contact you as needed.

7. PAYMENT

Unless service for your Microsoft Device is covered by the Microsoft-issued warranty, guarantee or extended service contract, you agree to pay the estimated Service charges at the time you submit an order (either by phone through our customer service agent or online). The estimated charges include all parts and labor required for Service, shipping charges, plus applicable tax. For Advance Exchange orders, please review the terms below.

8. WITHDRAWAL OF SERVICES

You will lose your right of withdrawal if the Service has been fully performed, provided that the performance has begun with your prior express consent and with the acknowledgement that you will lose your right of withdrawal once the Service has been fully performed by us. Service cancellations and refunds are not available if Microsoft has received your Microsoft Device for Service and has shipped your repaired or replacement Microsoft Device to you, or for any Advance Exchange orders once Microsoft has sent you the Advance Exchange Product.

9. LIABILITY FOR DAMAGE DURING SHIPPING

If you send in your Microsoft Device for Service, you are responsible to have it properly packaged to prevent damage while in transit for Service. You are also responsible for insurance coverage for any loss or damage to the Microsoft Device while in transit for Service. We will notify you if the Microsoft Device is damaged in any way in transit for Service; you will be responsible for any damage incurred before we receive your Microsoft Device.

After we have shipped back your Microsoft Device to you, if it arrives in a damaged condition, you must notify Microsoft of the damage within 2 days after you receive it by contacting

<http://support.microsoft.com>. If you fail to contact Microsoft regarding any damage to your Microsoft Device within 2 days after you receive it, you will be responsible for any damage.

10. DATA TRANSFER AND SOFTWARE INSTALLATION

Before you send your Microsoft Device to Microsoft for Service, you are responsible to back up all existing data, software, and programs, to remove or erase all existing data, and remove any storage device. In order to perform comprehensive testing and diagnostics on your Microsoft Device, your Device will be reset to its original factory state. This process will erase all programs and personal data on your Device.

If Service of your Microsoft Device involves transferring information or installing software, you will only submit an order if you have the legal right to: (1) copy the information, including verifying that your Microsoft Device does not contain illegal files or data; and (2) agree to the terms of the software license; you authorize Microsoft to transfer the information and accept those terms for you in performing the Service.

Microsoft is not responsible for loss, recovery, or compromise of data, programs or loss of use of equipment resulting from Service of your Microsoft Device.

11. ABANDONED PROPERTY

Microsoft will ship your Microsoft Device to the mailing address submitted when you authorized Service, unless you give us alternate instructions in writing. If your device is returned to Microsoft because delivery could not be completed at that address, Microsoft will attempt to contact you for an alternate address. If you do not provide an address where Microsoft or its agent may deliver your device within 60 days after the original delivery attempt, Microsoft will notify you that it considers your device abandoned. If your device is abandoned, Microsoft may dispose of your Microsoft Device (in accordance with applicable law); specifically, Microsoft may sell your device at a private or public sale to pay for any outstanding Service. Microsoft reserves its statutory and any other lawful liens for unpaid charges.

12. LIABILITY FOR OTHER PROPERTY

When you send your Microsoft Device in for Service, do not send any personal property or other Microsoft products with that Microsoft Device (this includes accessories for which you did not request Service, games, books, etc.); you are responsible for the loss of any personal property that you send to Microsoft. Other than the items that were required for the service of your Microsoft Device or its replacement, Microsoft does not guarantee that any personal property will be returned to you.

13. DEVICE SERVICE PROCESS

In accordance with Section 10, your Device will be reset to its original factory state during testing. If your Device is found to function as designed after testing, it will be returned to you with its original factory settings. If an issue is found, your Device may be repaired or replaced by new or refurbished goods of the same functionality, at Microsoft's discretion, in accordance with applicable laws for your country or region.

14. SPECIAL EDITION OR CUSTOM MICROSOFT DEVICES

If you send a special edition or custom Microsoft Device to Microsoft for Service, Microsoft will use best efforts to return the same or similar special edition or custom Microsoft Device to you; this will depend on its availability at the time of Service (special or custom editions may be out of production or inventory). Microsoft does not warrant or guarantee that we will be able to do so, as it may be commercially impracticable.

15. EXCLUSIONS FROM SERVICE

Microsoft reserves the right to refuse Service or consider as out-of-warranty, Microsoft Devices that are: (1) damaged by use with products not sold or licensed by Microsoft (including, for example, games or software and accessories not manufactured or licensed by Microsoft, and "pirated" games or software, etc.); (2) used for commercial purposes (including, for example, rental, pay-per-play, etc.); (3) opened, modified, or tampered with (including, for example, any attempt to defeat any technical limitation, security, or anti-piracy mechanism, etc.), or its serial number is altered or removed; (4) damaged by any external cause (including, for example, by being dropped, used with inadequate ventilation, etc., or failure to follow product manual instructions for the Microsoft Device); (5) sent to Microsoft without requesting an authorized Service order by phone or online; or (6) serviced by any third party other than Microsoft or its authorized service providers. In such event, we may return the Microsoft Device to you without service.

16. ADDITIONAL TERMS FOR ADVANCE EXCHANGE PROGRAM

In certain countries, Microsoft offers an Advance Exchange Program, under which you can receive a device prior to shipping back your device to Microsoft for service, with certain conditions. If you want to participate in the Advanced Exchange program, Microsoft will send you a replacement Microsoft Device (the "Advance Exchange Product") before you send your Microsoft Device to us, under the following conditions:

- Your Microsoft Device must comply with the terms of the warranty, guarantee or extended service contract;
- Your Microsoft Device will not qualify for this program if, after we receive it, there is evidence of physical or liquid damage, tamper, abuse, etc. or other exclusions from your Microsoft Device's warranty, guarantee or extended service contract;
- The Advance Exchange Product will be shipped to you in a box that includes a prepaid shipping label; and

- You must use the prepaid shipping label to return the Microsoft Device for which you received an Advanced Exchange Product and are requesting Service. You will need to return your original Microsoft Device in the same box within 14 days of receiving the replacement device.
- To guarantee that the original Microsoft Device is returned, we will need to take your credit card number. YOUR CREDIT CARD WILL NOT BE CHARGED, provided you return the original Microsoft Device (with the serial number you have provided to us) within 14 days of receiving the Advanced Exchange Product.
- A nominal fee may appear on your card from Microsoft, verifying that funds are available in your account (the nominal fee will be refunded); this is not a charge. You will be charged the replacement and handling fee equal to the current MSRP of the device or accessory, if: (1) we do not receive the original Microsoft Device back within 14 days from the date you took delivery of the replacement device as indicated by the carrier's tracking system; (2) the device is not under warranty; and/or (3) the device is excluded from warranty or service (has indication of tampering or physical damage, for example).

If you have any questions, please contact support at <http://support.microsoft.com>

17. LIMITED POST-SERVICE WARRANTY

In servicing your Microsoft Device, Microsoft warrants (1) that Service will be performed in a workmanlike manner and (2) that all parts or products used in the Service will be free from defects in materials and workmanship for either the remainder of the term of your Microsoft-issued warranty, guarantee or extended service plan or 90 days from the date of Service, whichever is greater. This post-Service warranty is an express warranty. If non-conforming Service is provided or a defect arises in a replacement part or product during the 90-day warranty period, at its option, Microsoft will: (1) repair the part or product, using new, used or refurbished replacement parts; (2) replace the part or product with a new, used or refurbished equivalent part or product; or (3) refund your payment for the Service.

Microsoft is not responsible and this post-service warranty does not apply if your Microsoft Device is:

- a. damaged by use with products not sold or licensed by Microsoft;
- b. opened, modified, or tampered with (including, for example, any attempt to defeat any technical limitation or security), or its serial number is altered or removed;
- c. damaged by any external cause, whether by you or someone else using your Microsoft Device, including, for example:
 - by being dropped;
 - misuse (including use outdoors), abuse, negligence, or accident;
 - mishandling or damage during shipment, except from Microsoft to you;
 - exposed to liquid;
 - used with inadequate ventilation;
 - scratched, dented, etc. or shows other cosmetic damage;
 - failure to follow installation, operation or maintenance instructions

- d. repaired by anyone other than Microsoft.

THIS WARRANTY AND REMEDY ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES, AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE AND PARTS OR PRODUCTS PROVIDED. MICROSOFT SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES WITH RESPECT TO SUCH ITEMS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Some states, provinces and/or other jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or exclusions or limitations on the duration of implied warranties or conditions, so these limitations or exclusions may not apply to you. The post-Service warranty gives you specific legal rights, and you may also have other rights that vary by state, province or jurisdiction. FOR CONSUMERS WHO ARE COVERED BY CONSUMER PROTECTION LAWS OR REGULATIONS IN THEIR COUNTRY OF RESIDENCE, THE BENEFITS CONFERRED BY THESE TERMS AND CONDITIONS ARE IN ADDITION TO ALL RIGHTS AND REMEDIES CONVEYED BY SUCH CONSUMER PROTECTION LAWS AND REGULATIONS.

18. LIMITATION OF LIABILITY

IF ANY DEVICE SHOULD BE DAMAGED OR LOST WHILE IN MICROSOFT'S CUSTODY, MICROSOFT'S LIABILITY WILL BE LIMITED TO THE COST OF REPAIR OR REPLACEMENT OF THE AFFECTED MICROSOFT DEVICE. OTHERWISE MICROSOFT'S ENTIRE LIABILITY TO YOU FOR DAMAGES ARISING FROM ANY CAUSE WHATSOEVER WITH RESPECT TO THE SERVICE OF YOUR MICROSOFT DEVICE, WHETHER DUE TO MICROSOFT'S NEGLIGENCE OR TO ANY OTHER REASON, IS LIMITED TO DIRECT DAMAGES UP TO THE GREATER OF: (i) THE COST TO REPAIR OR REPLACE THE MICROSOFT DEVICE; OR (ii) THE TOTAL AMOUNT YOU PAY TO MICROSOFT FOR THE SERVICE. MICROSOFT HAS NO LIABILITY WHATSOEVER FOR INDIRECT, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, SUCH AS LOST PROFITS OR REVENUE. MICROSOFT HAS NO LIABILITY FOR LOSS OF OR DAMAGE TO DATA OR SOFTWARE APPLICATIONS WHILE PERFORMING SERVICE. YOUR ONLY REMEDY IS TO SEEK RECOVERY OF DAMAGES AGAINST MICROSOFT IN AN AMOUNT NOT TO EXCEED (i) THE COST TO REPAIR OR REPLACE THE MICROSOFT DEVICE; OR (ii) THE TOTAL AMOUNT YOU PAY TO MICROSOFT FOR THE SERVICE.

19. SUBCONTRACTORS

Microsoft may subcontract with third-party service providers to service your Microsoft Device.

20. BINDING ARBITRATION AND CLASS ACTION WAIVER

If you live in (or if a business your principal place of business is in) the United States, this section applies to any dispute **EXCEPT DISPUTES RELATING TO THE ENFORCEMENT OR VALIDITY OF YOUR, YOUR LICENSORS', MICROSOFT'S, OR MICROSOFT'S LICENSORS' INTELLECTUAL PROPERTY RIGHTS.** The term "dispute" means any dispute, action, or other controversy between you and Microsoft concerning Service for Microsoft Devices (including its price) or this Agreement,

whether in contract, warranty, tort, statute, regulation, ordinance, or any other legal or equitable basis. "Dispute" will be given the broadest possible meaning allowable under law.

- a. Notice of Dispute. In the event of a dispute, you or Microsoft must give the other a Notice of Dispute, which is a written statement that sets forth the name, address and contact information of the party giving it, the facts giving rise to the dispute, and the relief requested. You must send any Notice of Dispute by U.S. Mail to **Microsoft Corporation, ATTN: LCA ARBITRATION, One Microsoft Way, Redmond, WA 98052-6399**. **A form is available at <http://go.microsoft.com/fwlink/?linkid=245499>**. Microsoft will send any Notice of Dispute to you by U.S. Mail to your address if we have it, or otherwise to your e-mail address. You and Microsoft will attempt to resolve any dispute through informal negotiation within 60 days from the date the Notice of Dispute is sent. After 60 days, you or Microsoft may commence arbitration.
- b. Small Claims Court. You may also bring any dispute in small claims court in your county of residence (or if a business your principal place of business) or King County, Washington, if the dispute meets all requirements to be heard in the small claims court. You may sue in small claims court whether or not you negotiated informally first.
- c. **Binding Arbitration**. **If you and Microsoft do not resolve any dispute by informal negotiation or in small claims court, any other effort to resolve the dispute will be conducted exclusively by individual binding arbitration governed by the Federal Arbitration Act ("FAA"). Class arbitrations are not permitted. You are giving up the right to sue in court before a judge or jury (or participate in court as a party or class member)**. Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award.
- d. **Class Action Waiver**. **Any proceedings to resolve any dispute in any forum will be conducted solely on an individual basis. Neither you nor Microsoft will seek to have any dispute heard as a class action, private attorney general action, or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or other proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.**
- e. Arbitration Procedure. Any arbitration will be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules (or if you are an individual and use your Microsoft Device for personal or household use, or if the value of the dispute is \$75,000 or less whether or not you are an individual or how you use your Microsoft Device, its Consumer Arbitration Rules). For more information, see www.adr.org or call 1-800-778-7879. To commence arbitration, submit the form available at <http://go.microsoft.com/fwlink/?linkid=245497> to the AAA. You agree to commence arbitration only in your county of residence (or if a business of your principal place of business) or in King County, Washington. Microsoft agrees to commence arbitration only in your county of residence (or if a business your principal place of business). You may request

a telephonic or in-person hearing by following the AAA rules. In a dispute involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually, and only to the extent required to satisfy your individual claim.

f. Arbitration Fees and Payments.

(i) Disputes Involving \$75,000 or Less. Microsoft will promptly reimburse your filing fees and pay the AAA's and arbitrator's fees and expenses. If you reject Microsoft's last written settlement offer made before the arbitrator was appointed ("Microsoft's last written offer"), your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than Microsoft's last written offer, Microsoft will: (i) pay the greater of the award or \$1,000; (ii) pay your reasonable attorney's fees, if any; and (iii) reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration. The arbitrator will determine the amount of fees, costs, and expenses unless you and Microsoft agree on them.

(ii) Disputes Involving More Than \$75,000. The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.

(iii) Disputes Involving Any Amount. In any arbitration you commence, Microsoft will seek its AAA or arbitrator's fees and expenses, or your filing fees it reimbursed, only if the arbitrator finds the arbitration frivolous or brought for an improper purpose. In any arbitration Microsoft commences, Microsoft will pay all filing, AAA, and arbitrator's fees and expenses. Microsoft will not seek its attorney's fees or expenses from you in any arbitration. Fees and expenses are not counted in determining how much a dispute involves.

g. Conflict with AAA Rules. This Agreement governs to the extent it conflicts with AAA's Commercial Arbitration Rules or Consumer Arbitration Rules.

h. Rejecting Future Arbitration Changes. You may reject any change Microsoft makes to Section 20 (other than address changes) by sending us notice within 30 days of the change by U.S. Mail to the address in Section 20.a. If you do, the most recent version of Section 20 before the change you rejected will apply.

i. Claims or Disputes Must Be Filed Within One Year. To the extent permitted by law, any claim or dispute to which Section 20 applies must be filed within one year in small claims court (Section 20.b) or in arbitration. The one-year period begins when the claim or Notice of Dispute first could be filed. If such a claim or dispute is not filed within one year, it is permanently barred.

j. Severability. If the class action waiver in Section 20.d is found to be illegal or unenforceable as to all or some parts of a dispute, then Section 20 will not apply to those parts. Instead,

those parts will be severed and proceed in a court of law, with the remaining parts proceeding in arbitration. If any other provision of Section 20 is found to be illegal or unenforceable, that provision will be severed with the remainder of Section 20 remaining in full force and effect.

21. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES

United States. If you live in (or if a business your principal place of business is in) the United States, the laws of your State of residence (or if a business your principal place of business) govern the interpretation of this Agreement, claims for breach of it, and all other claims (including consumer protection, unfair competition, implied warranty, and tort claims), regardless of conflict of law principles, except that the FAA governs all provisions relating to arbitration. You consent to the exclusive jurisdiction and venue of state and federal courts in King County, Washington, USA for all disputes relating to the Service or this Agreement that are heard in court (not arbitration and not small claims court).

Canada. If you live in (or if a business your principal place of business is in) Canada, the laws of your Province of residence (or if a business your principal place of business) govern the interpretation of this Agreement, claims for breach of it, and all other claims (including consumer protection, unfair competition, implied warranty, and tort claims), regardless of conflict of law principles. You consent to the exclusive jurisdiction and venue of courts in Ontario for all disputes relating to the Service or this Agreement

Elsewhere. If you live (or if a business your principal place of business is located) outside the United States or Canada, the laws of your country of residence (or if a business your principal place of business) govern the interpretation of this Agreement, claims for breach of it, and all other claims (including consumer protection, unfair competition, implied warranty, and tort claims), regardless of conflict of law principles.

22. ENTIRE AGREEMENT; SEVERABILITY; FORCE MAJEURE

This is the entire Agreement between you and Microsoft for Service for your Microsoft Device. Microsoft does not authorize any variance or modification of this Agreement. If any provision of this Agreement is determined to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement will continue in effect. Section 20.j says what happens if parts of Section 20 (arbitration and class action waiver) are found to be illegal or unenforceable. Section 20.j prevails over this section if inconsistent with it. Microsoft is not responsible for any failures or delays in performing Service that are due to events outside its reasonable control.

23. NOTICES FOR CALIFORNIA CONSUMERS

An estimate for repairs as required (Section 9844 of the California Business and Professions Code) will be given to the customer by the service dealer in writing, and the service dealer may not charge for work done or parts supplied in excess of the estimate without prior consent of the customer. Where provided in writing, the service dealer may charge a reasonable fee for services provided in determining the nature of the malfunction in preparation of a written estimate for repair. For information, contact the Bureau of Electronic and Appliance Repair, Department of Consumer Affairs, Sacramento, CA 95814.

A buyer of a Microsoft Device in California has the right to have the device serviced and repaired during the warranty period. The warranty period will be extended for the number of whole days that the device has been out of the buyer's hands for warranty repairs. If a defect exists during the warranty period, the warranty will not expire until the defect has been fixed. The warranty period also will be extended if the warranty repairs have not been performed due to delays caused by circumstances beyond the control of the buyer, or if the warranty repairs did not remedy the defect and the buyer notifies the manufacturer or seller of the failure of the repairs within 60 days after they were completed. If, after a reasonable number of attempts, the defect has not been fixed, the buyer may return the device for a replacement or a refund subject, in either case, to deduction of a reasonable charge for usage. The time extension does not affect the protection or remedies the buyer has under other laws.

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