

# Description and conditions of remote access to the Microsoft Windows operating system

## 1. Subject of the Business Terms

- 1.1 These terms and conditions define the rights and obligations of the parties during the provision of remote access to the Microsoft Windows operating system (hereinafter the “WIN service”). Regardless of the other provisions of the Contract, this annex takes precedence before the text of the Contract, including its annexes (but excluding this annex).
- 1.2 TMCZ is authorised to provide WIN services based on a contract with the Microsoft Corporation, registered office: One Microsoft Way, Redmond, WA 98052-7329, USA, or if applicable based on a contract with a different Microsoft company. For the purposes of these terms and conditions, **Microsoft** refers both to the Microsoft Corporation and to other entities affiliated with this company.
- 1.3 The WIN service consists of provision of the option to use the Microsoft Windows operating system (hereinafter “WIN software”) by TMCZ to the Contractual Partner via remote access, in the scope stipulated in these terms and conditions and in the Contract. The Contractual Partner will use the WIN software exclusively via remote access, whereas the WIN software will be installed in the environment of the TMCZ data centre. To eliminate any doubts, the parties take into account that these terms and conditions govern only the WIN service in relation to the Microsoft Windows operating system.
- 1.4 To eliminate any doubts, the parties agree that the WIN software must not be and is not installed on the Contractual Partner's equipment, and therefore that such installation is not a part of the WIN services.
- 1.5 The specification of WIN software and price for WIN services is set out in the respective annex to the Contract, which includes the obligation to provide WIN services.
- 1.6 With regard to the fact that the price for WIN services depends directly on Microsoft prices, the parties have agreed that TMCZ is authorised to change the price of WIN services by unilateral written notice delivered to the Contractual Party, if there is a change in the price or change in the used exchange rate by Microsoft. The change in the price for WIN services is effective from the first day of the calendar month following the month in which the notice on the price change was delivered to the Contractual Partner.
- 1.7 If the Contractual Partner does not agree with the price change, it is authorised to terminate the use of WIN services according to this annex, based on a written notice of resignation delivered to TMCZ. If the resignation according to the previous sentence is delivered to TMCZ at least 10 business days before the end of the calendar month, the provision of WIN services will be terminated as of the last day of such calendar month. If the notice of resignation is delivered later than by the deadline according to the previous sentence, the provision of WIN services will be terminated at the end of the following calendar month, whereas in this case the WIN services for this last calendar month will be provided for the prices effective before the notice of the price change.
- 1.8 Within the framework of the WIN service, the Contractual Partner is authorised to use the WIN software exclusively in accordance with these terms and conditions and the Contract. The parties have agreed that the provisions of this annex take precedence before any potential provisions which may be a part of the WIN software and which the Contractual Partner may conclude in electronic form within the framework of using the WIN services.
- 1.9 The Contractual Partner is authorised to use the WIN software in the following manner: display, launch or assurance of other access by the Contractual Partner to the WIN software, via any internet browser or any device connected to the internet, or via telephone or data network. The Contractual Partner's right to use the WIN software is non-exclusive and applies only in the scope required to fulfil the purpose of WIN services, whereas the territorial scope of the right to use the WIN software is stipulated as worldwide and is effective throughout the term of provision of WIN services for the relevant WIN software.
- 1.10 The Contractual Partner is authorised to use the WIN software exclusively using remote access to the TMCZ data centres. The Contractual Partner is not authorised to use the WIN software by means other than those agreed on the basis of the Contract, even though they may be technically possible.
- 1.11 Under this Contract, TMCZ does not provide the Contractual Partner with configuration or development rights to the WIN software. The Contractual Partner will not be granted access to any part of the WIN software source code. The Contractual Partner is not authorised to interfere with or modify the WIN software in any way. The Contractual Partner undertakes that it will not replicate, disseminate, rent or lend the WIN software in any manner. The Contractual Partner is authorised to grant access to the WIN software only in the quantity scope according to the Contract and must not make it accessible to other parties. The Contractual Partner is not authorised to grant the right to use the WIN software to any other party, or to assign, transfer, lease or otherwise divest of this right.
- 1.12 The Contractual Partner undertakes that if Microsoft raises any justified claims against it for reasons of violating the intellectual property rights of Microsoft, it will compensate such claims based on a written request from Microsoft.
- 1.13 The Contractual Partner undertakes that it will not use the WIN software and other services provided through the WIN service contrary to the Contract; in particular it will refrain from:
- 1.13.1 any conduct that could increase the risk of unauthorised dissemination and replication of the WIN software;
- 1.13.2 use of the WIN software and other services provided through the WIN service in a manner that could lead to detriment to lives or health, or damages to the environment, and any other conduct of a similar character.

- 1.14 The Contractual parties have agreed that the Contractual Partner must not use the WIN services and WIN software for purposes and activities, within the framework of which the potential failure of WIN services or WIN software could lead to death or severe detriment to human health, or damage to property or the environment (hereinafter "**high-risk use**"). High-risk use refers in particular to the use of WIN services or WIN software in aviation transport, mass passenger transport, nuclear or chemical facilities, life support systems, implanted medical devices, motor vehicles or weapons systems. If the conditions of this clause are violated by the Contractual Partner and subsequent TMCZ or Microsoft incur subsequent damages, the Contractual Partner undertakes to compensate TMCZ and Microsoft in full.
- 1.15 The Contractual Partner takes into account that all documents pertaining to the WIN software and other services which are provided through the WIN service, be it in electronic or other form, as well as the WIN software itself or the Customer software or Redistribution software (collectively referred to as "**Products**"), are owned by Microsoft, respectively that Microsoft is the authorised executor of copyright and other similar rights to the Products. The Products contain elements subject to copyright protection or protection under other industrial property rights of Microsoft (in particular trademarks, patents, utility models, etc.), including protection under international law. The Contractual Partner undertakes to refrain from any unauthorised infringement on these rights (in particular their modification, removal), unless such action is explicitly permitted by the respective legal regulations. The parties have agreed that the provisions of Section 66(1)(b) of the Copyright Act will not apply for the purposes of this Contract. The Contractual Partner takes into account that with the exception of the rights granted to it under the Contract, no other rights to the Products are transferred or passed to it, and the Contractual Partner is not authorised to distribute the Products in any manner, allow third parties to use them, or transfer the rights to the Products to third parties.
- 1.16 With regard to the fact that the scope of authorisation to use the WIN software is inferred from the authorisation granted to TMCZ by Microsoft, the parties have agreed that TMCZ is authorised unilaterally to amend the conditions for use of the WIN software according to this Contract, if Microsoft does so. TMCZ is authorised to do so by written notice on amendment of the right to use WIN software delivered to the Contractual Partner, in which it will designate the effective date of such change; if such date is not designated, the amendment is effective from the moment of delivery of the notice.
- 1.17 If for the purpose of enabling the use of WIN services (in particular for remote access to WIN software) other software has been installed on the Contractual Partner's equipment at its location, whose author or bearer of copyright is Microsoft (hereinafter "**Customer software**"), then it applies that the Contractual Partner is authorised to use such Customer software only for the purpose of using WIN services and only according to the instructions from TMCZ, which will be disclosed prior to use.
- 1.18 If in connection to the provision of WIN services the Contractual Partner is granted access to other software, whose author or bearer of copyright is Microsoft (apart from WIN software), whether in the form of software demos, development or redistribution software, or other instruments (hereinafter collectively the "**Redistribution software**"), the Contractual Partner is not authorised to use such Redistribution software in any manner, unless the Contractual Partner explicitly accepts and adheres to the conditions of using the Redistribution software (Service Provider Use Rights) submitted by TMCZ.
- 1.19 As of the date of terminating the provision of WIN services to the given WIN software, the Contractual Partner is obliged immediately to cease using the given WIN software and corresponding Customer software and Redistribution software. The Contractual Partner takes into account that TMCZ is authorised, in the case of terminating the provision of WIN services to the given WIN software, to request the returning or destruction of any reproductions of the relevant WIN software and corresponding Customer software, and undertakes to meet these requests in full. The same obligation in relation to the Customer and Redistribution software applies if the Contractual Partner ceases to be the owner of the equipment on which the relevant software is installed.
- 1.20 The parties have agreed that apart from termination of the Contract, respectively WIN services in accordance with the provisions of the Contract, the provision of WIN services according to this annex may also be terminated in the manner stipulated in these terms and conditions.
- 1.21 TMCZ is authorised to withdraw from the part of the Contract concerning the provision of WIN services at any time, if the Contractual Partner violates any of its obligations stipulated in these terms and conditions. Withdrawal is effective from the moment of delivery of a written notice to the Contractual Partner, unless TMCZ stipulates a later date in the notice. TMCZ is also authorised to withdraw only in relation to the part of the WIN service concerning specific WIN software.
- 1.22 If TMCZ withdraws from the Contract or part thereof due to violation of the Contractual Partner's obligations, the Contractual Partner undertakes to compensate TMCZ for all related damages, in particular any consideration TMCZ will have to pay Microsoft. Apart from liability towards TMCZ, the Contractual Partner is also liable directly to Microsoft in the event of violating the obligations according to these terms and conditions.
- 1.23 The parties have agreed that TMCZ is authorised to resign from the part of the Contract concerning the provision of WIN services or even a part of the WIN services if the contractual relationship with Microsoft based on which TMCZ is authorised to provide WIN services is terminated, or if TMCZ otherwise loses the right to provide WIN services. In the case according to the previous sentence, resignation is effective from the date when the respective contractual relationship with Microsoft was terminated or when authorisation to provide WIN services was lost, or at a later date indicated in the written resignation from TMCZ.
- 1.24 The Contractual Partner takes into account that neither TMCZ nor Microsoft nor its suppliers are liable to the Contractual Partner for losses caused by providing WIN services, and that it is not authorised to seek any compensation of losses from this title vis-à-vis Microsoft or its suppliers. If any guarantees are provided in relation to WIN services, these are provided by TMCZ, not by Microsoft.

- 1.25 The Contractual Partner undertakes to provide TMCZ and Microsoft with all the required cooperation if there is justified suspicion of the violation of copyright or other rights of Microsoft or TMCZ. Such cooperation consists primarily of allowing the inspection of the used Products and the submission of documents and information requested for this purpose by TMCZ or Microsoft.
- 1.26 TMCZ is authorised to disclose to Microsoft the Contractual Partner's identification data and all information about use of the Products by the Contractual Partner.
- 1.27 To eliminate doubts, the parties have explicitly agreed that TMCZ is not in delay in providing WIN services for the period during which its delay was caused by the interruption of provision by Microsoft or for the period during which delay was caused by defects in the technical equipment of the Contractual Partner or third parties.
- 1.28 The Contractual Partner takes into account that for the purposes of export regulations, the Products originate from the United States of America and the Contractual Partner is therefore obliged in relation to the Products to adhere to the rights and obligations arising from international regulations and the laws of the United States of America concerning the Products and export of the Products.