

# TOSHIBA CLOUD CLIENT MANAGER (TCCM) 'TRY AND BUY' AGREEMENT

THIS ONLINE TCCM TRIAL AGREEMENT (the "Agreement"), is between the entity you represent ("END-USER") and TOSHIBA EUROPE GMBH, having its place of business at Hammfelddamm 8, D-41460 Neuss, Germany ("Toshiba"). By clicking the acceptance box on the Toshiba Trial registration website [www.toshiba.eu/tccm/trial](http://www.toshiba.eu/tccm/trial) you confirm to have read and accepted the Terms and Conditions of the Agreement as set out below.

## 1. TRIAL PROGRAMME

- A. Toshiba provides a web-based cloud client management service, currently marketed as "Toshiba Cloud Client Manager" ("TCCM"), designed for managing multiple personal computers remotely (the "Service").
- B. The END-USER wishes to test and evaluate TCCM. Toshiba will provide the END-USER with a Trial Subscription to the Service on a limited non-renewable trial basis. Trial subscriptions are for the sole use of the END-USER only. Toshiba will not charge the END-USER a fee corresponding to such evaluation subscription. Upon expiration of the Trial subscription, such subscriptions may not be renewed. The End User can move to a paid subscription at the end of the Trial period.
- C. Term: The Trial Subscription Period is 90 days starting from the date Toshiba sends the email to the END-USER containing the password and login to access the Service. Further details are described in clause 3.1(b) below. After expiration of the 90 days, the Trial Subscription to the Service automatically ends without the need for any further termination notice.
- D. Number of Trial subscriptions: The number of PC devices that can be registered are 10 (ten).

## 2. SERVICE DESCRIPTION.

The Service will permit the END-USER access to the TCCM cloud based service to manage multiple end-point devices (such as Windows PC computers and planned in future releases tablets and smart-phones) remotely. The Service includes any updates made generally available from time to time by Toshiba, but excludes any significantly different functionality for which Toshiba charges separately, such as upgrades and version releases. Updates and/or upgrades will be offered by Toshiba as detailed in the "TCCM Support Services" document which is available on the Toshiba Website on the following URL: [www.toshiba.eu/tccm-support](http://www.toshiba.eu/tccm-support).

## 3. TRIAL SUBSCRIPTION.

**3.1 Acceptance of Trial Subscriptions.** Unless otherwise agreed by the parties in writing, the following procedure will be followed:

- A. **END-USER Details.** The END-USER shall supply the details required to set-up a TCCM Trial subscription on the Trial registration website.
- B. **Back Office.** Toshiba will provide to the END-USER by email a password and login to access the Service. Prior to activating the subscription account, Toshiba will verify that the END-USER details are correct in order to avoid any misuse of this offer. For security purposes the password and log-in details shall only be sent to the END-USER (once).
- C. **User Name and Password.** The END-USER will be responsible for keeping login and password confidential.
- D. **Use of the Service.** Use of the Service is governed by an [End User Licence Agreement](#) and an [International Licence Program Agreement](#). During the initial log-in process the END-USER will be requested to read and accept the [End User Licence Agreement](#) and the [International Licence Program Agreement](#). If the Agreements are not accepted then the TCCM Service cannot be accessed. You can review the agreements on our homepage under [www.toshiba.eu/tccm/trial](http://www.toshiba.eu/tccm/trial) before deciding to enter into the Agreement.
- E. **No Purchase.** For the avoidance of doubt, END-USER is not required to purchase any license to the Service after the expiration of the 90 days trial phase.

## 4. LICENSE GRANT; OWNERSHIP.

- 4.1 License Restrictions.** The END-USER acknowledges that the Service, the software that provides the Service and its structure, organization, and source code constitute valuable trade secrets of Toshiba and its suppliers. The END-USER agrees not to: (a) integrate the software that provides the Service with other software or services, or frame the Service within another user interface or application; (b) distribute, sublicense, lease, rent, loan, or otherwise transfer the Service to any third party or permit any third party to benefit from the use or functionality of the Service other than explicitly detailed under this Agreement; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the software that provides the Service; or (d) charge any fee for the use or results of a trial subscription. The END-USER must not remove, alter, or obscure in any way all proprietary rights notices (including copyright notices) of Toshiba or its suppliers on or within the copies of the Service.
- 4.2 Ownership.** The design and function of the Service and in each case all data and information contained therein, the software that provides the Service, and any worldwide copyrights, trademarks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights relating thereto ("Intellectual Property Rights") are the exclusive property of Toshiba and its suppliers and licensors. All rights not expressly granted in this Agreement to the END-USER are reserved by Toshiba.

## 5. LIMITED WARRANTY.

- 5.1 Quality of the Service.** Toshiba will provide the Service with reasonable skill and care. The END-USER acknowledges and agrees that the Service may not be error-free, and/or free from interruption or failure.
- 5.2 Other Rights.** Any further rights of the END-USER resulting from a breach of the provisions of this Section 5. shall be subject to the limitation of liability pursuant to Section 8 below.
- 5.3 Warranties Made by END-USER.** Without limiting any other remedy that Toshiba may have, the END-USER agrees to indemnify and hold Toshiba harmless from and against any and all liabilities, losses, damages, costs and expenses, including without limitation reasonable attorneys' fees and costs, incurred by Toshiba resulting from END-USER's breach of this Agreement unless the END-USER can prove that such breach occurred without his fault.

## 6. CONFIDENTIALITY.

Each party (the "Disclosing Party") may during the term of this Agreement disclose to the other party (the "Receiving Party") certain information, which the Disclosing Party considers proprietary or confidential. "Confidential Information" means confidential information of either party, including software, source code, software tools, trade secrets, know-how, inventions, processes, schematics, pricing, user names, passwords, and financial information. Without limitation to the foregoing, all data and information contained within the Service are Confidential Information of Toshiba. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to those employees who have a need to know such Confidential Information for purposes of this Agreement, and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential information of a similar nature, and with no less than reasonable care. Without limitation to the foregoing, the END-USER may not access, use or refer to any information or data contained within the Service except as required to operate the Service. Subject to applicable document retention regulations, each party will return all Confidential Information promptly to the other party after (a) the other party requests that it be returned or (b) this Agreement expires or is terminated.

## 7. TERM AND TERMINATION.

- 7.1 Term.** The term of this Agreement will be as set forth in clause 1 (c) hereof unless terminated earlier in accordance with the provisions of this Section 7.
- 7.2 Termination.** Either party may terminate this Agreement if the other party materially breaches any provision of this Agreement, other than Section 4, and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party. Toshiba may terminate this Agreement if the END-USER breaches Section 4 and does not cure the breach within ten (10) days after receiving written notice thereof from Toshiba.
- 7.3 Effect of Termination.** Upon any termination or expiration of this Agreement for any reason, the END-USER agrees to refrain thereafter from using the Service. Sections 3.1(c), 4.1, 4.2, 5, 6, 7.3 and 8 through 9 will survive any termination or expiration of this Agreement.

## 8. LIMITATION OF LIABILITY.

- 8.1 Unlimited Liability.** Toshiba's liability to the END-USER for damages resulting from a breach of its contractual obligations under this Agreement or any tortious act or omission shall be determined by the applicable statutory provisions if it involves death, personal injury and/or damages under the applicable product liability act or where Toshiba's liability is based on intentional acts, gross negligence or fraudulent misrepresentation.
- 8.2 Limited Liability.** In other cases, Toshiba's liability for damages resulting from a negligent breach of contractual duties that are essential for the performance of this Agreement shall be limited to damages that are contract-typical and foreseeable for Toshiba on the Effective Date. Any other claims of the END-USER, whether based on contract or tort, are excluded. Therefore, Toshiba shall not be liable for any incidental, indirect, punitive, special or consequential damages including without limitation loss of business, revenues, profits or savings or depletion of goodwill, costs, expenses or other claims for consequential compensation, howsoever caused, which arise out of or in connection with this Agreement.
- 8.3 Limitation Period.** Subject to Section 8.1 above any and all claims for damages or other pecuniary compensation shall become time-barred after 12 months from the date of the END-USER's knowledge of Toshiba's act, omission or non-performance entitling END-USER to the payment of damages.
- 8.4 Extended Limitation of Liability.** To the extent to which the liability of Toshiba is excluded or limited, this shall also apply in respect of the liability of Toshiba's affiliates and the personal liability of its employees, resellers, representatives and agents.
- 8.5 Liability for Default.** Toshiba shall not be deemed to be in default with the provision of Services unless a specified date therefor is exceeded by more than ten (10) working days and a further adequate period of grace fixed by the END-USER in writing, which must amount to at least fifteen (15) working days, has expired without performance having been affected. Subject to Section 8.1 above, any damages claimed by The END-USER resulting from Toshiba being in default with performance shall be limited to 50% of the damages actually incurred.

#### EXPORT RESTRICTIONS.

The END-USER may not download, export, or re-export any software or technical data received hereunder, regardless of the manner in which received, if such download, export, or re-export is not in compliance with any regulation governing export restrictions including but not limited to the German Export Control Act and regulations, the European Union rules, the US Department of Commerce regulations, the Export Administration Regulations and the Japanese Export Control Legislation and any subsequent re-enactments or amendments thereof.

#### 9. MISCELLANEOUS.

- 10.1 **Notices.** All notices or other communications intended to have legal effect under this Agreement must be in writing and delivered by postage prepaid certified mail (return receipt requested), overnight courier, or facsimile (with confirmation of receipt) to the other party at its address set forth in this Agreement. Notices will be effective upon delivery or when delivery is refused.
- 10.2 **Independent Contractors.** The END-USER and Toshiba are independent contractors, and this Agreement will not be deemed to create any agency, employer-employee relationship, partnership, or joint venture.
- 10.3 **Applicable Law.** This Agreement is governed by and construed in accordance with German law without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.
- 10.4 **Jurisdiction.** Any dispute between The END-USER and Toshiba regarding this Agreement will be subject to the exclusive jurisdiction of the German courts. Venue shall be Düsseldorf.
- 10.5 **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect. In such a case the parties shall be obliged to participate in the substitution of the provisions concerned by a valid provision considered substantially equivalent in economic terms.
- 10.6 **Waiver.** The delay or failure of either party to exercise any right under this Agreement will not constitute a waiver of such right unless such party has specifically waived such right in writing.
- 10.7 **Force Majeure.** Any failure or delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such failure or delay is caused by any event beyond the control of such party (a "Force Majeure Event").
- 10.8 **Assignment.** The END-USER may not assign or transfer any of its rights or obligations under this Agreement, whether voluntarily or by operation of law, without Toshiba' prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void.
- 10.9 **Interpretation.** The headings of Sections under this Agreement are not to be used in interpreting this Agreement. As used in this Agreement and unless otherwise provided, the word "including" means "including but not limited to."
- 10.10 **Complete Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written communications and agreements between the parties regarding the subject matter of this Agreement, including any additional terms or conditions submitted by the END-USER, whether part of a purchase order or otherwise. No amendment of this Agreement will be effective unless made in writing and signed by both parties.