

2020 PC Replacement Accessories Purchase Agreement

THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT (AS DEFINED BELOW) CREATE A CONTRACT BETWEEN YOU AND THE ELECTRONIC INFORMATION NETWORK. PLEASE READ IT CAREFULLY. TO CONFIRM YOUR UNDERSTANDING AND ACCEPTANCE OF THIS AGREEMENT, CLICK "AGREE" ON THE PRECEEDING ORDER PAGE.

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This PC Replacement Accessories Purchase Agreement ("Agreement") is made by and between The Electronic Information Network, a non-for-profit corporation organized under the laws of the Commonwealth of Pennsylvania ("EIN"), and the EIN Participating Library ("LIBRARY") and is effective as of the date upon which LIBRARY places an order through EIN's online order system.

RECITALS:

WHEREAS, EIN has conducted an evaluation on behalf of EIN's library members and selected vendors that enable LIBRARY to leverage EIN's aggregate purchasing power for the purchase of certain computer equipment and associated licenses, warranties (all of which shall be referred to as "PC Replacement Purchased Equipment"); and

WHEREAS, LIBRARY desires to purchase certain of the PC Replacement Purchased Equipment as more specifically described herein; and

NOW, THEREFORE, EIN AND LIBRARY, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree as follows:

1. Equipment Description.

- A. LIBRARY hereby purchases that PC Replacement Purchased Equipment, which is set forth in the order confirmation email which attachment is incorporated into, and made part of, this Agreement by this reference as if fully set forth herein.
- B. The PC Replacement Purchased Equipment includes the manufacturer's warranty.
- C. LIBRARY understands and agrees that EIN is not a manufacturer's reseller of the Equipment and shall have no responsibility or liability with respect to any implied or express warranty of merchantability and fitness for a particular purpose. EIN HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PC REPLACEMENT PURCHASED EQUIPMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL OTHER WARRANTIES OF EIN, EXPRESSED OR IMPLIED, AND ALL REPRESENTATIONS, GUARANTEES, INSTRUCTIONS, PROMISES, DESCRIPTIONS AND SAMPLES FROM EIN PERTAINING TO QUALITY OF THE PC REPLACEMENT PURCHASED EQUIPMENT, CONDITION, CHARACTERISTICS, PERFORMANCE OR OTHER MATTERS, AND ALL WARRANTIES OF EIN WITH RESPECT TO ANY PATENT INFRINGEMENT INVOLVING THE GOODS ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. IN ADDITION, EIN SPECIFICALLY, AND NOT BY WAY OF LIMITATION, DOES NOT WARRANT THE ACCURACY OR SUFFICIENCY OF ANY ADVICE OR RECOMMENDATIONS GIVEN TO LIBRARY IN CONNECTION WITH THE PC REPLACEMENT PURCHASED EQUIPMENT.

2020 PC Replacement Accessories Purchase Agreement

2. Fees.

LIBRARY agrees to remit payment to EIN as itemized on on-line order placed by LIBRARY within 30 days of receiving invoice from EIN.

3. LIBRARY Responsibility.

LIBRARY further agrees to abide by all terms and conditions regarding the purchase, installation and use of the PC Replacement Purchased Equipment as follows:

- A. Title and risk of loss in the PC Replacement Purchased Equipment and all liabilities attendant thereto shall pass to LIBRARY upon EIN's delivery to LIBRARY. LIBRARY shall inspect such PC Replacement Purchased Equipment immediately upon delivery. Claims for shortages or other errors must be made within ten (10) days from the date of shipment.
- B. The PC Replacement Purchased Equipment disposal is the Library's responsibility and the PC Replacement Purchased Equipment does not get returned to EIN at the end of the current PC Replacement Program.
- C. Library assumes all responsibility for the warranty and replacement of any damaged PC Replacement Purchased Equipment.

4. Term and Termination.

This is a purchase agreement and will terminate upon LIBRARY's receipt of PC Replacement Purchased Equipment.

5. Assignment.

The rights granted in this Agreement may not be assigned or transferred by LIBRARY without the prior written approval of EIN, which approval may be withheld in EIN's sole discretion. LIBRARY shall not be permitted to delegate its responsibilities or obligations hereunder without the prior written approval of EIN, which approval may be withheld in EIN's sole discretion.

6. Governing Law, Jurisdiction.

This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the internal laws, and not the laws of conflicts, of the Commonwealth of Pennsylvania, USA.

Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Pittsburgh, PA or Allegheny County, Pennsylvania, USA. LIBRARY and EIN agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

7. Limitation of EIN's Liability.

In no event shall EIN be liable for any special, indirect, incidental, consequential, or punitive damages. EIN's liability and LIBRARY's exclusive remedy for any cause of action arising in connection with this Agreement or the sale or use of the PC Replacement Purchased Equipment, whether based upon negligence, strict liability, breach

2020 PC Replacement Accessories Purchase Agreement

of warranty, breach of contract or equitable principles, is expressly limited to, at EIN's option, replacement of, or repayment of the purchase price for the portion of the PC Replacement Purchased Equipment with respect to which damages are established. Notwithstanding anything to the contrary, EIN's maximum liability to LIABILITY pursuant to this Agreement, regardless of the theory on which any claim is based, shall not exceed the aggregate amount of the total purchase price LIBRARY paid to EIN pursuant to this Agreement.

8. General Terms.

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

This Agreement (together with the Recitals and the attachments hereto, which are made a part of this Agreement by this reference as if fully set forth herein) constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing and authorized by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

No failure or delay on the part of either party in the exercise of any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

Neither party shall be liable for failure to perform hereunder, except for LIBRARY's obligation to pay the amounts due to EIN, if the failure results from a cause beyond its control, including, without limitation, fire, electrical, mechanical, or equipment breakdowns, delays by third party vendors (such as, but not limited to, shipping delays attributable to the hardware manufacturer), civil disturbances or disorders, strikes, Acts of God or acts or omissions by the other party.