

# Terms and Conditions of Use and Business for the COMPAREX Cloud Center of COMPAREX Canada Inc.

## A. General Provisions

### 1. Scope of application

- 1.1. The portal "COMPAREX Cloud Center" (hereinafter only "Cloud Portal", currently available under <https://comparexcloudcenter.com>) is a web-based platform on which the company COMPAREX Canada Inc. based in 60 Atlantic Avenue, Suite 200, Toronto, ON M6K 1X9, Canada, with registered address at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver BC V6E 4N7, Canada (hereinafter: "COMPAREX") and its "affiliates" (these are all the companies that are affiliated with COMPAREX) offer Cloud Services for corporate customers on their own behalf and for their own account. Each time reference is made in these "Terms and Conditions" of "COMPAREX" or respectively the "Contracting Parties", what is referred to is the affiliate acting as the Contracting Party.
- 1.2. The Cloud Services offered on the Cloud Portal are in particular those of Microsoft Corporation, 6100 Neil Road, Suite 210, Reno, NV 89511, USA ("Microsoft"). COMPAREX serves as the authorised multi-tier cloud solution provider for Microsoft Cloud Services. This means on the one hand that COMPAREX is authorised to offer Microsoft Cloud Services to corporate customers for their own use ("End Customers"). COMPAREX is furthermore entitled to offer Microsoft Cloud Services to its own distribution partners ("Resellers") for sale to corporate customers and their own use. The Reseller shall be the partner authorised to do so within the Microsoft partner programme. The End Customers and Resellers shall hereinafter be jointly referred to as "Customers". The Cloud Portal Customers are exclusively commercial entities.
- 1.3. These Terms and Conditions govern the use of the Cloud Portal by the Customer (Section B) as well as the terms and conditions of the contracts and agreements entered into electronically through the Cloud Portal (Section C). The Terms and Conditions provided in section C.1. shall apply to the sale of Microsoft Cloud Services to End Customers (including associated support services). The Terms and Conditions provided in section C.2. shall apply to the sale of Microsoft Cloud Services (including associated support services) to Resellers. The provisions in sections C.1. and C.2. shall apply accordingly to the sale of Cloud Services of other third-party providers, unless expressly provided otherwise therein. The Terms and Conditions provided in section C.3. shall apply to the sale of other IT services through the Cloud Portal.
- 1.4. By registering individual users on the Cloud Portal, the Customer accepts the exclusive application of these Terms and Conditions for the use of the Cloud Portal as well as the acquisition of services by the Customers on the basis of the Cloud Portal. Any applicable statutory provisions apply in addition thereto. Any existing general terms and conditions of business of the Customer or other contractual provisions between COMPAREX and the Customer that deviate from these Terms and Conditions shall not apply.

## B. Terms of Use for the Cloud Portal

### 2. Authorisation, registration, and login information

- 2.1. Only Customers authorised by COMPAREX are permitted to access and use the Cloud Portal. COMPAREX shall inform Customers about their authorisation by email, providing a link for other steps to be taken (password change, confirmation of legal terms and conditions, registration of individual users, etc.). There is no legal claim to authorisation. COMPAREX is free to suspend any authorisation retroactively, stating the grounds for such action, or to block associated user accounts.
- 2.2. The sole right conferred by authorisation is the Customer's right to register individual employees of the Customer's company as users of the Cloud Portal. The Customer shall be responsible for ensuring that the users provide complete, truthful information within the scope of the registration process, and that in the event of any later changes, the Customer communicates such changes to COMPAREX without delay (if and insofar as provided in the Cloud Portal itself or, if not possible, via email to [info@comparex.com](mailto:info@comparex.com)). The Customer shall, in particular, provide notice without delay if the user's right to represent the company with regard to access to and the issuance of contractual binding statements in the Cloud Portal were to lapse. This is the case particularly if the user is an employee of the Customer who is leaving the Customer's company.
- 2.3. Within the context of the registration process, each user shall first be provided with a login name that matches his/her email address. Only customised business email addresses (e.g. [firstname.lastname@company.com](mailto:firstname.lastname@company.com)) shall be acceptable as a login name. General email addresses (e.g. [info@company.com](mailto:info@company.com)) or addresses supplied by commercial email providers (e.g. [@gmail.com](mailto:@gmail.com) / [@me.com](mailto:@me.com) / [@gmx.de](mailto:@gmx.de)) shall not be acceptable as a login name. Each user shall be required to set a password for his or her login name (login name and password hereinafter collectively referred to as "Login Information").
- 2.4. The Customer shall be responsible for ensuring that the users' Login Information is not disclosed to third parties. The Customer shall also ensure that third parties are not given any opportunity to view the Cloud Portal, which includes screenshots or printouts.
- 2.5. The Customer shall take all reasonable actions to protect all Login Information provided to the Customer for users against unauthorised access by third parties. The Customer shall be liable for all activities performed on the Cloud Portal under the users' Login Information, unless the Customer is able to prove that the information has become known to third parties without any fault on the Customer's part. It is essential that users log out of the password-protected area after every use. Should the Customer become aware that third parties are abusing the access data, the Customer shall notify COMPAREX immediately.
- 2.6. After receiving a notice pursuant to clause 2.5, COMPAREX shall block access to the password-protected area using this Login Information. A block cannot be removed until after the Customer has submitted a separate request to that effect to COMPAREX or after re-registration has taken place.
- 2.7. When using the Cloud Portal, the Customer shall not transmit any content that includes viruses, Trojan horses, or other malware.
- 2.8. For its own protection and to prevent the Cloud Portal from being infected with viruses or other malware, the Customer shall ensure that reasonable internal security measures and virus scanners are in place. This applies accordingly to COMPAREX.

### 3. Data protection; termination by the Customer

- 3.1. It may be necessary to save and process personal information of the Customer and/or its users to enable the Customer to register and use the Cloud Portal. COMPAREX shall observe all applicable

laws and regulations governing data protection and privacy when collecting, using, and processing personal information. The Customer shall be responsible to obtain all permits and consents necessary for any such storage, use and processing of personal information.

- 3.2. The Customer may revoke its authorisation and the registration of its users on the Cloud Portal at any time upon 30 days' notice, which shall then become effective at the end of a calendar month. COMPAREX shall revoke the authorisation or respectively the registration as soon as the Customer and/or its users no longer use the Cloud Services offered by the Cloud Portal.

#### **4. Amendments to these Terms and Conditions**

- 4.1. COMPAREX shall be entitled to amend or append these Terms and Conditions with effect for the future following a reasonable advance notice. Amendments or addenda shall be communicated to the Customer in an appropriate format (e.g. in writing, via email, or within the context of the Cloud Portal access).
- 4.2. Should the Customer not agree to the amendment or addendum, the Customer shall be required to issue a written objection thereto within four weeks upon receipt of the notice. If the Customer does not object to the amended Terms and Conditions within the allotted time, such Terms and Conditions shall be validly incorporated in accordance with the announcement thereof. COMPAREX shall point this out in the notice of the amendment or addendum.
- 4.3. If the amendments or addenda are indispensable to COMPAREX for non-waivable legal reasons, the obligation to announce them and the Customer's right to object thereto shall not apply. Amendments and addenda made on the basis of such non-waivable legal reasons shall not give rise to any claims for damages vis-à-vis COMPAREX.

#### **5. Miscellaneous**

- 5.1. COMPAREX shall be entitled, but not obligated, to expand the technical services and features offered on the Cloud Portal. COMPAREX reserves the right to change the services and features offered on the Cloud Portal and to offer them accordingly.
- 5.2. The Cloud Portal is operated in Germany.

### **C. Terms and Conditions of Business**

#### **C.1. Terms and Conditions of Business for the acquisition of Microsoft Cloud Services by End Customers**

Microsoft Cloud Services shall be provided to the End Customer on the basis of the "Microsoft Cloud Agreement" that is valid at the time the order is placed (online available at: <https://docs.microsoft.com/en-us/partner-center/agreements>). The End Customer shall accept the provisions of the Microsoft Cloud Agreement. In all other regards, the relationship between COMPAREX and the End Customer shall be governed by the provisions of this section C.1.

#### **6. Object of the Agreement**

- 6.1. The object of the agreement is the provision of Microsoft Cloud Services, i.e. the procurement of the temporary rights of use for the use of standard software products available online ("Cloud Services") or for on premises use. In addition, COMPAREX shall

provide for the End Customer support services associated with the Microsoft Cloud Services. In return, the End Customer shall make recurring compensation payments to COMPAREX.

- 6.2. The functionality and the scope of services of the respective Microsoft Service depends on the respectively valid Microsoft product descriptions. The respectively valid provisions for the products in general (Product Terms, available online at: <http://www.microsoftvolumelicensing.com/>) and further for Online Services ("Online Services Terms", available online at: <http://www.microsoftvolumelicensing.com/>) and, if applicable, the "Service Level Agreement for Microsoft Online Services" (<http://www.microsoftvolumelicensing.com/>) by Microsoft shall apply to the Services.
- 6.3. If the objects of the agreement are Cloud Services offered by other third-party providers, the product descriptions and terms and conditions of these third-party providers may apply as well. COMPAREX shall notify the End Customer accordingly within the context of the order placement process.
- 6.4. The functionality of a particular Cloud Service may change due to, for example, newer versions at any time.
- 6.5. Microsoft may select and/or change the location or respectively the spectrum of locations (regions) of the data centres where the Cloud Services are made available ("server locations") at any time, unless the End Customer is provided with the option to select the server location as part of the order placement process.

#### **7. The End Customer's order placement process**

- 7.1. The End Customer is making an offer to COMPAREX by ordering Cloud Services in the Cloud Portal.
- 7.2. The contract between COMPAREX and the End Customer that governs the provision of the Cloud Services shall be concluded when COMPAREX accepts the offer. This is done in the form of confirmation of the End Customer's order placed on the Cloud Portal.

#### **8. Support services**

- 8.1. COMPAREX shall provide for the End Customer support services associated with the Cloud Services. This means that the End Customer may contact COMPAREX directly with any questions of a technical or functional nature that pertain to the use of the Cloud Services. If it is found that the reason for the request is a fault that Microsoft is responsible for, COMPAREX shall open a support ticket with Microsoft on the End Customer's behalf.
- 8.2. If COMPAREX provides support services pertaining to a Cloud Service without any additional use charges, COMPAREX reserves the right to limit requests for support to a certain number of requests per contract year and to refer the Customer to fee-based support services in all other regards. COMPAREX shall use commercially reasonable efforts to provide the support services and thus without any contractual responsibility for their success.

#### **9. Remuneration**

- 9.1. The amount of the use charges for the respective Cloud Service depends on the COMPAREX prices published at the time the order is placed or respectively their automatic extension within the context of the order placement process.
- 9.2. The use charges shall become payable 14 days upon receipt of the respective invoice issued by COMPAREX. The End Customer shall promptly be in default upon the expiry of the agreed-upon payment date.

- 9.3. The period for the calculation of the use charges (in advance / retroactively) depends on the respective product description.
- 9.4. COMPAREX may change the use charge amount at the end of a billing cycle, but not prior to the end of the minimum term, for example, if Microsoft increases the use charge for the respective Cloud Service.
- 9.5. All use charges are cash prices, free of cost, and are shown without any sales, use, value added, goods and services, harmonized or other such taxes required at the time the service is provided. All such taxes will be calculated at the respective statutory amount and itemized on the invoice issued by COMPAREX. The amount of any increases in such taxes shall be borne by the End Customer.
- 9.6. The End Customer shall make payments by remitting the funds to the account stated on the invoice. Any banking fees shall be borne by the End Customer. The remittance shall be effected in such a timely manner that COMPAREX may dispose of the payment at the latest at the end of the term of payment.
- 9.7. In the event payment is delayed, COMPAREX shall be entitled to charge interest in the amount of nine percentage points above the annual rate of interest established by [the Royal Bank of Canada] from time to time as its reference rate then in effect for determining interest rates on Canadian Dollar commercial loans made by it in Canada. In the event payment is delayed, or if other justified doubts about the End Customer's creditworthiness exist, COMPAREX may request collateral and prepayment for pending services and may render all claims relating to the business relationship payable immediately. The right to assert other rights and claims, for example damage claims, shall remain reserved.
- 9.8. If the End Customer is in default with the complete payment of at least one invoice, COMPAREX has the following rights depending on the duration of the default and without prejudice to the rights according to clause 9.7:
  - a) After a period of ten (10) calendar days COMPAREX has the right to block the End Customer's access to other comparable cloud services.
  - b) After a period of twenty (20) calendar days COMPAREX has the right, as far as technically possible, to reduce the performance of the Cloud Services used by the end customer (throttling).
  - c) After a period of thirty (30) calendar days COMPAREX has the right to revoke the granting of rights and/or to deny access to the Cloud Services with immediate effect. In case of doubt, neither such revocation nor inhibition of access shall be construed as withdrawal or termination of the contract. COMPAREX will restore access as soon as the End Customer has completely settled the outstanding payments.
- 9.9. The End Customer shall only be entitled to withhold payments or offset them against counterclaims to the extent that its claims are undisputed or legally established.

## 10. Warranty

- 10.1. The COMPAREX warranty for a particular Cloud Service does not include the suitability of the Cloud Service for a particular intended purpose. This shall not apply if such suitability was specifically warranted in the product description.
- 10.2. If a Cloud Service is not provided in a contractual manner (which includes in particular impairments of the Cloud Service availability), the End Customer shall only have warranty claims against COMPAREX to the scope and extent to which Microsoft has issued a warranty in accordance with the provisions of the product description, the "Microsoft Cloud Agreement", and, if applicable, the "Service Level Agreement for Microsoft Online Services"

(available online at: <http://www.microsoftvolumeicensing.com/>). This shall apply in particular to flat compensation reimbursements (for example in the form of "service credits"), provided Microsoft guarantees these for individual Cloud Services in its aforementioned contractual terms and conditions. If the objects of the agreement are Cloud Services offered by other third-party providers, the product descriptions and service level agreements of these third-party providers may apply as well. COMPAREX shall notify the End Customer accordingly within the context of the order placement process.

- 10.3. Microsoft warrants to COMPAREX that the Cloud Services, their use, and their sale do not infringe any third-party rights. If therefore third parties assert claims against the End Customer due to an infringement of third-party rights that is based on the sale of the Cloud Services and/or their use, Microsoft shall defend COMPAREX against such claims and indemnify COMPAREX for all costs incurred due to such claims. COMPAREX shall pass the full extent of this warranty on to the End Customer. This Microsoft warranty is subject to the condition (a) that the End Customer informs COMPAREX immediately about the assertion of such third-party claims, (b) that the parties involved give Microsoft sole control of the defence and potential settlement of the dispute, and (c) that the End Customer does whatever can be reasonably expected to support Microsoft in the defence.
- 10.4. The provision in clause 10.3 shall not apply to third-party claims (a) relating to the use of a Cloud Service, if Microsoft and/or COMPAREX have asked the End Customer to suspend the use of the Cloud Service in question, (b) if the legal infringement is based on a combination of the Cloud Service with another product, data, or processes which are not from Microsoft or COMPAREX, or (c) if the legal infringement is based on a change that was not authorised by Microsoft and/or COMPAREX or misuse of the respective Cloud Service.
- 10.5. The following provisions shall apply with regard to the handling of third-party rights, if the object of the agreement relates to Cloud Services offered by other third-party providers.
  - a) COMPAREX shall be liable for the infringement of third-party rights by the services it provides only if the services are used in a contractual manner, and only within Canada as well as at the place of the contractual use of services.
  - b) The End Customer shall notify COMPAREX immediately if a third party asserts against the End Customer that a service offered by COMPAREX infringes its rights. COMPAREX and, if applicable, its upstream suppliers shall be entitled, but not obligated, to defend itself against the asserted claims at its own expense to the legally permitted extent. The End Customer shall not recognise any third-party claims until COMPAREX has had the opportunity to defend itself against the third-party rights in another way.
  - c) If a service provided by COMPAREX infringes third-party rights, COMPAREX shall, at its discretion and own costs, i) procure the End Customer the right to use the service, or ii) structure the service in a way that does not infringe any third-party rights, or iii) take back the service and reimburse the End Customer for any fees paid in this regard (minus a reasonable compensation for use), if COMPAREX is unable to remedy the situation with reasonable effort. COMPAREX shall take the End Customer's interests into account within reason.
- 10.6. Notwithstanding any other provision of this agreement, except for the warranties and remedies expressly provided for in this Section 10, COMPAREX does not provide any other remedy or warranty, and the End Customer hereby expressly waives all other remedies,

representations, warranties and conditions, express or implied, including but not limited to any warranties of quality or durability, and any implied warranties or conditions of merchantable quality or fitness for a particular purpose and all others arising by statute or otherwise in law or from a course of dealing or usage of trade.

## **11. Liability**

- 11.1. COMPAREX shall be liable for the provision of the Cloud Portal, the handling of order processes on the basis of the Cloud Portal, as well as the Cloud Services provided through the Cloud Portal exclusively in accordance with the following sections.
- 11.2. The total liability of COMPAREX in respect of any actions, claims, demands, awards, judgments, settlements, damages, losses, costs, liabilities or expenses arising from or related to this agreement or the performance or non-performance of services to be provided hereunder shall be limited to foreseeable damages attributable to breaches of material obligations, and in any event shall not exceed in the aggregate the amount of CAD100,000.00 per calendar year.
- 11.3. For the purposes of Section 11.2 above, material obligations are those obligations that can only be fulfilled when the agreement is properly carried out, whose violation jeopardizes the possibility of achieving the purpose of the agreement, and where the contractual partner has an ongoing right to expect that they be adhered to.
- 11.4. In no event will COMPAREX be liable for any loss of revenue, profit, property or use, business interruption, loss of information or failure to realize expected savings, or any consequential, special, incidental, indirect, contingent, punitive or exemplary losses or damages, even if COMPAREX has been advised of the possibility thereof.
- 11.5. COMPAREX' liability for the loss of data exists only to the extent such losses could not have been avoided by adequate precautions of the End Customer to avoid the loss of data (including, but not limited to, the creation of at least daily backup copies of all data). In other cases, liability for the loss of data shall be limited by the other provisions set out in this section.
- 11.6. COMPAREX shall not assume any liability or guarantee for the accuracy of the results it has compiled or calculated to the extent that their inaccuracy is the consequence of incorrect/incomplete information provided by the End Customer.
- 11.7. The limitations and exclusions of liability contained in this Section 11 apply to all claims for damages, whether based on breach of contract or tort (including negligence), infringement of intellectual property rights, strict liability, breach of warranty, failure of essential purpose, fundamental breach, breach of a fundamental term or otherwise.
- 11.8. The foregoing limitations and exclusions of liability also apply to claims for damages which are claimed by a party against the employees or representatives of COMPAREX.

## **12. Suspension of the obligation to perform**

- 12.1. Circumstances and events that cannot be prevented by diligent and proper business management ("cases of force majeure") shall cause the contractual obligations of the Contracting Parties to be suspended for the duration of the disruption and within the scope of its effect. If, in cases of force majeure, the impairments last for longer than one week, the Contracting Parties shall have the right to terminate the agreement relating to the Cloud Service in question without notice. No further claims may be asserted.

- 12.2. The consequences of a labour dispute at COMPAREX or a third party shall be considered cases of force majeure as well if they impact the services provided by COMPAREX.

- 12.3. In cases where COMPAREX has properly requested a Cloud Service from Microsoft that is affected by an impairment of performance, but Microsoft fails to provide the respective Cloud Service either completely or not in a contractual manner without the fault of COMPAREX, COMPAREX shall be released from its obligation to perform. If COMPAREX, in these cases, has claims of its own based on non-performance and/or poor performance by Microsoft relating to the provision of the Cloud Services towards the End Customer, COMPAREX shall assign these claims to the End Customer.

## **13. Confidentiality**

- 13.1. The Contracting Parties shall treat any information about secret know-how or the inner workings of the business of the respective other Contracting Party obtained prior to or after the conclusion of the agreement as strictly confidential. This pertains in particular to all non-public information about the Cloud Services as well as the data from End Customers that is processed within the context of the Cloud Services.

- 13.2. The Contracting Parties shall require their employees (including temporary employees and interns) and, if applicable, any subcontractors used for the performance of the agreement in writing to maintain confidentiality within the scope stated, and submit to the respective other Contracting Party upon request the respective confidentiality agreements. The duty to maintain confidentiality shall continue to exist even after the termination of the agreement.

## **14. Data protection**

- 14.1. The End Customer shall adhere to the applicable data protection, privacy and personal information protection laws and provisions governing the processing of personal data through Cloud Services. In this regard, the End Customer shall be the Controller. If deviating or supplementary data protection agreements are required, the End Customer shall negotiate these with the respective Processor. Clause 6.5 is specifically referenced.

## **15. The right to audit**

- 15.1. Following a customary notification, COMPAREX shall have the right to audit compliance with the contractual provisions (including the use provisions from the OST (Microsoft Online Service Terms) and the respective product descriptions)) at the premises of the End Customer during normal business hours. COMPAREX may also engage a third party, in particular Microsoft or respectively auditors that Microsoft uses, for the performance of such an audit. One requirement for an audit by a third party is that this party submit to reasonable duties of confidentiality with regard to the End Customer or that this party be subject to professional confidentiality duties under the law.

## **16. Term and termination**

- 16.1. The term of the agreement corresponds to the agreed-upon term of the ordered Cloud Service. If the Parties did not agree on a term, the term shall be indefinite, subject to termination in accordance with this agreement.

- 16.2. If a Cloud Service is not terminated in compliance with a notice period that may be required in the product description, the term shall automatically be extended by the period stated in the product description. The extension shall be subject to the Cloud Service conditions that are in force at the time of the extension. This shall apply in particular to the amount of the use charges. In the event of Cloud Services with a minimum term, the services may be terminated for the first time when the minimum term has expired.
- 16.3. The End Customer may be entitled to deactivate its access to the Cloud Service prior to the expiry of the (minimum) term. COMPAREX can only provide access to the End Customer's data stored in the Cloud Service as long and as far as the access to the Cloud Service is active and paid.
- 16.4. The right of both Contracting Parties to a termination for good cause shall remain unaffected. An extraordinary termination due to a contractual infringement by the other Contracting Party requires that the respective Party was informed of contractual infringement upon a reasonable warning notice and that it was not remedied.
- 16.5. Terminations must be in writing. If COMPAREX has the ability to perform a termination directly via the Cloud Portal, this shall satisfy the written form requirement.

#### 17. Side agreements, place of jurisdiction, applicable law

- 17.1. COMPAREX shall have the right to commission third parties to perform its services.
- 17.2. COMPAREX shall be entitled to transfer any agreements, including all rights and obligations, concluded through the Cloud Portal to a company affiliated with COMPAREX. This agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.
- 17.3. Side agreements must be in writing. Amendments or addenda performed within the scope of the contractually provided amendment and adaptation rights may be communicated in text form as well, in particular by email.
- 17.4. This agreement is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The exclusive place of jurisdiction for all disputes between the party in connection with this agreement shall be the courts of the Province of Ontario. Each of the parties irrevocably submits to the jurisdiction of the courts of the Province of Ontario. Nevertheless, COMPAREX shall be entitled to sue the Customer at its applicable place of jurisdiction, where the Customer has its registered office.
- 17.5. Should any individual provision of this agreement either be or become ineffective, illegal, invalid or unenforceable in any jurisdiction, the ineffectiveness, illegality, invalidity or unenforceability of that provision will not affect the effectiveness, legality, validity or enforceability of the remaining provisions, or the effectiveness, legality, validity or enforceability of that provision in any other jurisdiction.
- 17.6. The parties confirm that it is their express wish that this agreement, as well as any other documents relating to this agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.

#### C.2. Terms and Conditions of Business for the acquisition of Microsoft Cloud Services by Resellers

If a Reseller obtains Cloud Services through the Microsoft Cloud Portal for its own sale to its (corporate) customers and their own use, the Terms and Conditions for the acquisition of Microsoft Cloud Services by End Customers (section C.1.) shall apply to the extent that the Reseller assumes the role of the End Customer in these provisions. The following addenda and deviations shall apply:

#### 18. Reseller's sales rights and obligations

These provisions shall be appended to section C.1.:

- 18.1. The Reseller shall receive the non-exclusive right, which is limited to the term of this agreement, to actively market and sell Cloud Services within Canada ("contractual territory") to End Customers, which are not consumers as defined by Sec. 1 of the *Consumer Protection Act, 2002* (Ontario) ("its customers"). The Reseller shall not be authorised to sell to other resellers.
- 18.2. The Reseller shall bear the costs for maintaining its status as an authorised partner of the Microsoft Partner Programme. It shall, in particular, ensure that it has the human resources necessary and trained in the sale and support of online services in accordance with Microsoft regulations.
- 18.3. The Reseller may set its own prices.
- 18.4. The Reseller shall agree on minimum terms with its customers, if and to the extent these are required in the product description by Microsoft for the respective Cloud Service. In all other regards, the Reseller shall be free to determine the term with its customers in the agreement. COMPAREX shall not become liable or bound by such an agreement between the Reseller and its customers.
- 18.5. If the Reseller sells Cloud Services under the Microsoft product name, the Reseller shall adhere to and/or provide the applicable proprietary and copyright notes.
- 18.6. The Reseller shall sell the Cloud Services on its own behalf and account; it shall conduct its business as an independent merchant. It is not authorised to legally represent COMPAREX or Microsoft. The Reseller shall bear the risk for any payment defaults by his customers vis-a-vis COMPAREX.
- 18.7. The Reseller shall be entitled to offer its customers its own services in connection with the sale of the Cloud Services. In this case, the Reseller shall clearly identify these types of services as its own services, for which neither COMPAREX nor Microsoft are responsible.
- 18.8. The Reseller shall inform its customers prior to the conclusion of a contract about the application of the OST and the Microsoft Cloud Agreement to be concluded by the customer. The Reseller shall ensure that its customers consent to the ordering of the Cloud Service with the content of these provisions, and shall confirm their consent in writing (or, if possible in the individual case, on the Cloud Portal). If Microsoft changes the provisions of the online services or of the Microsoft Cloud Agreement, the Reseller shall obtain its customers' consent to the modified version at the latest when a Cloud Service is extended.
- 18.9. If the Reseller's customers do not fulfil their contractual obligations, in particular their obligations under the Microsoft Cloud Agreement, and if the Reseller is therefore entitled to claims against its customers, the Reseller shall, if so requested by COMPAREX, assign these claims to COMPAREX, provided COMPAREX is obligated to pay Microsoft damages for the customers' contractual violations or to obtain these claims against the customers.
- 18.10. The Reseller shall be liable to COMPAREX for all activities performed by its customers within the context of their user accounts and access to Cloud Services. In the event of a non-

contractual and/or illegal use of the Cloud Services, COMPAREX and Microsoft shall have the right to block the user accounts and access of the respective customers until the violation has been remedied and/or the customer has, at the satisfaction of COMPAREX and/or Microsoft, taken measures that make a recurrence of the violation in the future unlikely. COMPAREX shall promptly inform the Reseller of such a block.

#### 19. Reseller's order placement process

These provisions shall replace clause 7 of section C.1.:

- 19.1. The Reseller shall order its customers' Cloud Services from COMPAREX on its own behalf and account. Reference is made to the confirmation by its customers required in this regard in accordance with clause 18.8.
- 19.2. A contract for Cloud Services between COMPAREX and the Reseller is concluded through the confirmation of the Reseller's order by COMPAREX.

#### 20. Support services

These provisions shall replace clause 8 of section C.1.:

- 20.1. The Reseller shall provide support services for its customers that are associated with the Cloud Services and shall specifically agree on this with its customers. In this regard, the Reseller shall be the central and first point of contact for all technical and functionality-related questions from its customers relating to the use of the Cloud Services.
- 20.2. Inquiries directed by an End Customer directly to COMPAREX or Microsoft may, at its own discretion, be forwarded to the Reseller and shall then be answered/handled by the same.
- 20.3. COMPAREX shall be the Reseller's point of contact for all support questions that the Reseller cannot answer on its own, because the training, documentation, and support tools required to do so are unavailable. If it is found that the reason for the request is a fault that Microsoft is responsible for, COMPAREX shall open a support ticket on the End Customer's behalf.
- 20.4. In all other regards, clause 8.2 of section C.1. shall apply accordingly.

#### 21. Data protection

These provisions shall replace clause 14.1 of section C.1.:

- 21.1. The Reseller shall be responsible for ensuring that its customers comply with all data protection, privacy and personal information protection laws and regulations relating to the processing of personal data through Cloud Services and shall specifically notify its customers of this obligation. Its customers shall, in this regard, be the Controller. If deviating or supplementary data protection agreements are required, its customers shall negotiate these with the respective Processor.

#### 22. The right to audit

These provisions shall append clause 15.1 of section C.1.:

- 22.1. The Reseller shall require its customers to grant a right to audit which allows COMPAREX or Microsoft to audit its customers pursuant to clause 15.1 of section C.1. with regard to the compliance with the contractual provisions (including the use

provisions set forth in the online services and the respective product descriptions as well as the provisions of the Microsoft Cloud Agreement).

#### 23. Term and termination

These provisions shall replace clauses 16.1 and 16.2 of section C.1.:

- 23.1. The term of this reseller agreement shall be unlimited and shall commence at its conclusion.
- 23.2. A proper termination requires that the Reseller is currently not receiving any Cloud Services for its customers under the agreement. In this case, the agreement may be terminated by both parties by written declaration and a notice period of one month at the end of the month.
- 23.3. In the event of an extraordinary termination of this agreement by COMPAREX, the termination shall apply as well to all Cloud Services under this agreement, provided COMPAREX did not state anything to the contrary in its letter of termination.

#### C.3. Terms and Conditions of Business for the acquisition of other IT services

Should COMPAREX use the Cloud Portal to offer other IT services, the object of the agreement shall follow from the respective agreements between the Contracting Parties concluded within the context of the order placement process, which shall have precedence over these Terms and Conditions. In all other aspects, the provisions of sections C.1. and C.2. shall apply accordingly, in particular clauses 7/19 (order placement process), 9 (compensation), 10 (warranty), 11 (liability), 16/23 (term and termination) and, if the offer was made to a Reseller, clause 18 (Reseller's sales rights and obligations).

COMPAREX Canada Inc.  
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