

Special Terms and Conditions for Cloud Services of COMPAREX Canada Inc.

1. Scope of application

- 1.1. These Special Terms and Conditions ("STC") shall apply to the extent that 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 their "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 the STC to "COMPAREX" or respectively the "Contracting Parties", what is referred to is the affiliate acting as the Contracting Party.
- 1.2. The Cloud Services offered based on these STC are in particular those of Microsoft Corporation, 6100 Neil Road, Suite 210, Reno, NV 89511, USA ("Microsoft"). COMPAREX shall be authorized to offer Microsoft Cloud Services to corporate customers for their own use ("End Customers").
- 1.3. The following terms and conditions shall apply to the sale of Microsoft Cloud Services to End Customers (incl. associated support services). These provisions shall apply accordingly for the sale of Cloud Services of other third-party providers, unless otherwise explicitly stipulated there.
- 1.4. Complementary and subordinated to these STC, the General Terms and Conditions of COMPAREX Canada Inc. shall apply (available at <https://comparex.ca/wp-content/uploads/2016/10/COMPAREX-Canada-Reseller-Terms-and-Conditions.pdf>) complementary and subordinated to these, the legal provisions shall apply. Any existing general terms and conditions of business of the Customer or other contractual provisions between COMPAREX and the Customer that deviate from these STC shall not apply.

2. Amendments of these STC

- 2.1 COMPAREX shall be entitled to amend or supplement these Special 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 or via email).
- 2.2 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.
- 2.3 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.

3. Object of the Agreement

- 3.1 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 support services associated with the Microsoft Cloud Services to the End Customer. In return, the End Customer shall make recurring compensation payments to COMPAREX. 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. Besides, the provisions of these STC shall apply between COMPAREX and the End Customer.
- 3.2 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.
- 3.3 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.
- 3.5. The functionality of a particular Cloud Service may change due to, for example, newer versions at any time.
- 3.6. Microsoft may select and/or change the location or respectively the spectrum of locations (regions) of the computer centers where the Cloud Services are made available ("server locations") at any time, unless the Customer is provided with the option to select the server location as part of the order placement process.
- 3.7. Should COMPAREX offer other IT services based on these STC, 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 Special Terms and Conditions of Business. Otherwise, the provisions of these STC shall apply, in particular clauses 4 (Order Process), 6 (Remuneration), 7 (Warranty), 8 (Liability), and 13 (Term and Termination).

4. The End Customer's order placement process

4.1 Offers of COMPAREX are non-binding and shall only be understood as an invitation to the End Customer on its part to bindingly order the services referenced in the offer. The End Customer is making a legally binding offer to COMPAREX by ordering Cloud Services.

4.2. 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.

5. Support services

- 5.1 COMPAREX shall provide support services associated with the Cloud Services to the End Customer. 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.
- 5.2 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.

6. Remuneration

- 6.1. 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.
- 6.2. 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.
- 6.3. The period for the calculation of the use charges (in advance / retroactively) depends on the respective product description.
- 6.4. 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.
- 6.5. 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.
- 6.6. 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.

- 6.7. 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.
- 6.8. 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 6.7:
- After a period of ten (10) calendar days COMPAREX has the right to block the End Customer's access to other comparable cloud services.
 - 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).
 - 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.
- 6.9. 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.

7. Warranty

- 7.1. 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.
- 7.2. 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.microsoftvolumelicensing.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.

- 7.3. Microsoft guarantees 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 defense and potential settlement of the dispute, and (c) that the End Customer does whatever can be reasonably expected to support Microsoft in the defense.
- 7.4. The provision in clause 7.3 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 authorized by Microsoft and/or COMPAREX or misuse of the respective Cloud Service.
- 7.5. 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 for infringements of rights asserted by third parties within Canada.
- b) The Customer shall notify COMPAREX immediately if a third party asserts against the 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 themselves against the asserted claims at their own expense to the legally permitted extent. The Customer shall not recognize 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 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 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 Customer's interests into account within reason.

- 7.6. Notwithstanding any other provision of these STC, except for the warranties and remedies expressly provided for in this Section 7, 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.

8. Liability

- 8.1. COMPAREX shall exclusively be liable for the provision of Cloud Services according to the following paragraphs.
- 8.2. 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 these STC 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 CAD 100,000.00 per calendar year.
- 8.3. For the purposes of Section 8.2 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.
- 8.4. 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.
- 8.5. 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.
- 8.6. 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.
- 8.7. The limitations and exclusions of liability contained in this Section 8 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.

- 8.8. 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.

9. Suspension of the obligation to perform

- 9.1. 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.
- 9.2. The consequences of a labor dispute at COMPAREX or a third party shall be considered cases of force majeure as well if they impact the services provided by COMPAREX.
- 9.3. 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 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.

10. Confidentiality

- 10.1. 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.
- 10.2. 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.

11. Data protection

- 11.1. 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 3.6 is specifically referenced.

12. The right to audit

- 12.1. Following a customary notification, COMPAREX shall have the right to audit compliance with the contractual provisions (including the use provisions from the online services and the respective product description) 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.

13. Term and termination

- 13.1. 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 these STC.
- 13.2. 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.
- 13.3. 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.
- 13.4. 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.
- 13.5. Terminations must be in writing. If COMPAREX has the ability to perform a termination electronically, this shall satisfy the written form requirement.

14. Side agreements, place of jurisdiction, applicable law

- 14.1. COMPAREX shall have the right to commission third parties to perform its services.
- 14.2. COMPAREX shall be entitled to transfer any agreements, including all rights and obligations, concluded based on these STC to a company affiliated with COMPAREX. This agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.
- 14.3. 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.

- 14.4. These STC are 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 these STC 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.
- 14.5. Should any individual provision of these STC 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.
- 14.6. The parties confirm that it is their express wish that these STC, as well as any other documents relating to these STC, 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.

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