

## Special Terms and Conditions for Cloud Services of COMPAREX USA, Inc. ("COMPAREX")

### 1. Scope of application

- 1.1. These Special Terms and Conditions ("**STC**") shall apply to the extent that COMPAREX and its affiliates provide Cloud Services for corporate customers ("**Customers**") on their own behalf and for their own account. Each time reference is made in these STC to "COMPAREX" what is referred to is COMPAREX USA, Inc. or the affiliate acting as the contracting party and references to the "Contracting Parties" in these STC's are to such COMPAREX contracting party and the relevant Customer.
- 1.2. The Cloud Services (as defined in Section 3.1) offered based on these STC include, in particular, those of Microsoft Corporation , 6100 Neil Road , Suite 210, Reno, NV 89511 ("**Microsoft**"). COMPAREX shall be authorized to offer Microsoft Cloud Services to Customers).
- 1.3. The following terms and conditions shall apply to the sale of Microsoft Cloud Services to Customers (including associated support services). These provisions shall apply additionally to the sale of Cloud Services of other third-party providers, unless otherwise expressly stated herein.
- 1.4. In these STC "**Offer**" means an offer by COMPAREX that has expressly been referred to as legally binding and "**Order**" means an order of the Customer that COMPAREX has accepted without reservation by confirming the order in writing or by providing the services.
- 1.5. Each Order or Offer (as applicable) shall together with (a) these STC (b) the General Terms and Conditions of COMPAREX if incorporated into the Agreement by the Order or Offer and (c) any other documents incorporated by the Order or Offer (as applicable) shall form a contract ("**Agreement**") between COMPAREX and the Customer that is separate from all other contracts, Offers and Orders between the Contracting Parties (unless an Order or Offer expressly provides otherwise).
- 1.6. To the extent that there is any conflict or inconsistency between the documents forming the Agreement they shall take precedence in the order in which they appear in Section 1.5 (i.e. with these STC having the highest priority).
- 1.7. Upon the Customer's request, COMPAREX shall make the contractual documents mentioned in Section 1.5 available in the respective current version.

### 2. Amendments of these STC

- 2.1 COMPAREX shall be entitled to amend or supplement these STC with effect for the future following reasonable 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 must 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 as well as cloud services of other software vendors including the procurement of the temporary usage rights o for certain standard software products ("**Cloud Services**") available online. In addition, COMPAREX shall provide support services associated with the Microsoft Cloud Services to the Customer. In return, the Customer shall make recurring compensation payments to COMPAREX.
- 3.2 Microsoft Cloud Services shall be provided to the Customer on the basis of the "Microsoft Cloud Agreement" that is valid at the time the order is placed (online available at: <https://msdn.microsoft.com/partner-center/agreements>). The Customer shall accept the provisions of the Microsoft Cloud Agreement. Without prejudice to the terms of the Microsoft Cloud Agreement, the provisions of these STC shall apply between COMPAREX and the Customer.
- 3.3 The functionality and the scope of services of the respective Microsoft Cloud Service depend on the respectively valid Microsoft product descriptions. The respectively valid provisions for online services ("online services", available online at: <http://www.microsoftvolumelicensing.com/>) and, if applicable, the "Service Level Agreement for Microsoft Online Services" (available online at: <http://www.microsoftvolumelicensing.com/>) by Microsoft shall apply to the Cloud Services.
- 3.4 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 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.

### 4. The Customer's order placement process

- 4.1 Unless an offer expressly provides otherwise, offers or solicitations of COMPAREX are non-binding and shall only be understood as an invitation for the Customer to order the services referenced in the offer or solicitation. The Customer, in placing an order, is making a legally binding offer to COMPAREX by ordering Cloud Services, which COMPAREX may accept or decline in its discretion.
- 4.2 A binding agreement has been concluded if the Customer accepts an Offer (as defined in Section 1.4) or if COMPAREX accepts an Order by confirming the Order or by providing the service.

### 5. Support services

- 5.1 COMPAREX shall provide support services associated with the Cloud Services to the Customer. This means that the 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 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. Subject to Section 8.3, COMPAREX shall provide the support services AS IS and without any responsibility for their success or failure.

## 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 Customer shall be in default if payment has not been made by 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 or other third party supplier increases the use charge for the respective Cloud Service.
- 6.5. All use charges are cash prices, free of cost, and are shown without applicable sales, use or Value Added Taxes that may be required at the time the service is provided as well as any other taxes or duties levied on the Cloud Service.
- 6.6. The Customer shall make payments by remitting the funds to the account stated on the invoice. Any banking fees shall be borne by the Customer.
- 6.7. In the event payment is delayed, COMPAREX shall be entitled to charge interest in the amount of the lower of (i) 4% per annum above the prime rate from time to time as published in the Wall Street Journal (or, in the event the Wall Street Journal ceases publication of such rates, another publication of national repute) or (ii) the maximum amount allowable under applicable law. Interest will accrue from the due date until the date of payment (whether before or after judgment), on a daily basis. In the event payment is delayed, or if other justified doubts about the 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 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 Section 6.7:
  - a) From a delay of ten (10) calendar days COMPAREX has the right to block the Customer's access to other comparable cloud services.
  - b) From a delay 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 Customer (throttling).
  - c) From a delay 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 Agreement. COMPAREX will restore access as soon as the Customer has completely settled the outstanding payments.
- 6.9. The 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. COMPAREX EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO ANY CLOUD SERVICES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHATSOEVER. ALL SERVICES AND INFORMATION ARE PROVIDED TO CUSTOMER "AS IS." This shall not apply if such suitability is specifically warranted in the product description.
- 7.2. To the extent that 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/>), COMPAREX will, to the extent permitted, pass that warranty coverage on to the Customer. 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 Customer accordingly within the context of the order placement process.
- 7.3. To the extent, that Microsoft guarantees to COMPAREX that the Cloud Services, their use, and their sale do not infringe any third-party IP- rights, COMPAREX will indemnify the customer only to the same extent. If therefore third parties assert claims against the Customer due to an infringement of third-party rights that is based on the sale of the Cloud Services and/or their use and Microsoft will defend COMPAREX against such claims and indemnify COMPAREX for all costs incurred due to such claims, COMPAREX shall pass the full extent of this indemnification on to the Customer. This Microsoft warranty is subject to the condition (a) that the Customer informs COMPAREX as soon as reasonably practicable 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 Customer does whatever can be reasonably expected to support Microsoft in the defense.
- 7.4. The provision in Section 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 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 third-party IPR claims related to Cloud Services offered by other third-party providers:
  - a) COMPAREX shall be liable for the infringement of third- party rights by the Cloud services in the same extent as the third-party provider grants IPR- Indemnification to end-customers and only i provided that the Services are used in a contractual manner, and only for infringements of rights asserted by third parties within the designated country of usage for the Cloud Services. .
  - b) The Customer shall notify COMPAREX as soon as reasonably practicable 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 may, 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.

## 8. Liability

- 8.1. COMPAREX will have no liability for failure to allocate or reserve any Product or Services for Customer or for failure to deliver Products within a specified time period. CUSTOMER AGREES THAT COMPAREX'S AGGREGATE LIABILITY FOR DAMAGES ARISING UNDER THE TERMS OF THE AGREEMENT,

WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL BE LIMITED TO ACTUAL, PROVEN, DIRECT DAMAGES AND WILL NOT EXCEED THE LOWER OF 100,000.00 USD OR THE NET AMOUNT PAID TO COMPAREX BY CUSTOMER FOR THAT PRODUCT OR SERVICE WHICH IS THE SUBJECT OF THE CLAIM WITHIN THE IMMEDIATELY PRECEDING 12 MONTH PERIOD. EXCEPT FOR INDEMNITY OBLIGATIONS AND BREACHES OF CONFIDENTIALITY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF REPUTATION OR OPPORTUNITY, LOSS OF PROFITS OR REVENUE (WHETHER DIRECT OR INDIRECT, ANTICIPATED OR ACTUAL), LOSS OF PRODUCTION OR LOSS OF BUSINESS, LOSS OF DATA OR SECURITY BREACH OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, OR ANY PRODUCTS OR INFORMATION, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF THOSE DAMAGES. THE PARTIES EXPRESSLY WAIVE ALL CLAIMS FOR THOSE DAMAGES.

- 8.2. Nothing in the Agreement will operate to exclude or restrict one party's Liability to the other for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 8.3. Nothing in this Section 8 will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.
- 8.4. The exclusions from and limitations of, liability set out in this Section 8 will be considered severally. The invalidity or unenforceability of any one sub-clause or clause will not affect the validity or enforceability of any other sub-clause or clause and will be considered severable from each other.
- 8.5. The foregoing limitations on 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, if 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 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 under this Agreement or any Order. If COMPAREX, in these cases, has claims of its own against the Customer relating to the provision of the Cloud Services based on non- performance and/or poor performance by Microsoft, COMPAREX shall assign these claims to the Customer.

## **10. Confidentiality**

- 10.1. The Contracting Parties shall treat any information about the business of the respective other Contracting Party obtained prior to or after the conclusion of the Agreement as strictly confidential including, but not limited to, all trade secrets, know-how and all non-public information about the Cloud Services as well as the data from 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**

The Customer shall adhere to the applicable data protection laws and provisions governing the processing of personal data through Cloud Services. In this regard, to the extent a data Controller is required, the Customer shall be the Controller. If deviating or supplementary data protection agreements are required, the Customer shall negotiate these with the respective Processor.

## **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 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. For any audit by a third party, the third party must submit to reasonable obligations of confidentiality with regard to the Customer or that this party be subject to professional obligations of confidentiality 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 unlimited.
- 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 Customer may be entitled to deactivate its access to the Cloud Service prior to the expiry of the (minimum) term. COMPAREX can only guarantee access to the 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. Either Contracting Party may terminate for cause. Termination for cause requires a contractual breach by the other Contracting Party that upon notice by the non-breaching Party is not remedied within 10 days.
- 13.5. Terminations must be in writing. If COMPAREX has the ability to perform a termination electronically, this shall satisfy the written requirement.

## **14. Side agreements, place of jurisdiction, applicable law**

- 14.1. The Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of the state of North Carolina, without

regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

- 14.2. Subject to Section 14.3, the state and federal courts in Wake County, North Carolina have exclusive jurisdiction to determine any dispute arising out of or in connection with the Agreement (including in relation to any non-contractual obligations).
- 14.3. Any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.
- 14.4. Subject to Section 14.3, each party waives any objection to, and agrees to submit to, the jurisdiction of the courts in Wake County, North Carolina.
- 14.5. If any term of the Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Agreement and this will not affect the remainder of the Agreement which will continue in full force and effect.

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as of 1 October 2018

