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| CLOUD SUPPLY AGREEMENT  (microsoft seat-based services) |

Cloud supply agreement (microsoft seat-based services)

**BETWEEN** **Compupac IT Solutions Ltd.** atUnit 9, Cleveragh Business Park, The Back Avenue, Cleveragh, Sligo, F91 XH64 (“Supplier”)

**AND** at (“Customer”)

Background

1. The Supplier is an authorised reseller of certain Microsoft seat-based cloud services.
2. The Supplier and the Customer agree that the Supplier will provision, administer, and provide support (as applicable) for the Customer’s Microsoft seat-based cloud services in accordance with the terms and conditions of this agreement.

This Agreement includes:

* This page including the execution provisions,
* The Schedule,
* The terms and conditions; and
* The GDPR Attachment.

All capitalised words used in this agreement have the meaning given to them in clause 25 of the terms and conditions.

**Executed as an agreement**

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| Signed by **Compupac IT Solutions Ltd.** by its duly authorised signatory: | | Signed by by its duly authorised signatory: | |
| Signature: |  | Signature: |  |
|  |  |  |  |
| Name: | Garth McManus | Name: |  |
|  |  |  |  |
| Title: | Sales Manager | Title: |  |
|  |  |  |  |
| Date: | / / | Date: | / / |

schedule

1. Supplier: Contact details

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| --- | --- |
| Physical Address: | Unit 9, Cleveragh Business Park, The Back Avenue, Cleveragh, Sligo, F91 XH64 |
| Postal Address: | Unit 9, Cleveragh Business Park, The Back Avenue, Cleveragh, Sligo, F91 XH64 |
| Email: | sales@compupacit.ie |
| Attention: | Garth McManus or John Byrne |

1. Customer: Contact details

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| --- | --- |
| Physical Address: |  |
| Postal Address: |  |
| Email: |  |
| Attention: |  |

1. Key Contact Personnel

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| --- | --- |
| Supplier | Garth McManus |
| Customer |  |

1. Subscriptions and Ordering

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| 4.1 Existing subscriptions | As at the date that this Agreement is signed by both parties, the Supplier is the Primary Administrator for all the Customer’s existing Microsoft seat-based subscriptions.  A list of the Customer’s existing subscriptions for which the Supplier is the Primary Administrator is available on request from the Supplier. |
| 4.2 Transferring Subscriptions from another Microsoft partner | The Transferring Subscriptions will be transferred to the Supplier, so that the Supplier is the Primary Administrator for those subscriptions, at the timing specified below:   * + 1. Promptly following the date that this Agreement is signed by both parties, except where (b) below applies.     2. On expiry of the current term of those subscriptions, if Microsoft policies prevent the transfer prior to this time. |
| 4.3 New Orders: Additional Subscriptions and seat-counts | The Customer authorises the Supplier to purchase subscriptions for the Customer, or to increase the seat-count of existing subscriptions, by the Supplier placing an Order with the Distributor. All Order Requests and Orders are made subject to this Agreement.  The Supplier will place Orders for the Customer on receipt of an Order Request. An Order Request is made by the Customer when:  (a) The order is issued in writing by the Customer and:   * Specifies the subscription type, * Specifies the seat-count required, * Specifies the term, or mix of terms (if applicable) required for the subscriptions from the available term options (which may include monthly or annual or a mix of these term options, depending on when the Order is made and the subscription type required), * includes any other information reasonably required by the Supplier; or   (b) The Customer accepts a quote or proposal issued by the Supplier for supply of Microsoft seat-based cloud services, with the Customer providing its acceptance in writing or otherwise as required by the Supplier and provided that the quote or proposal is accepted by the Customer within the time frame specified by the Supplier (if any). |
| 4.4 Immediate Cancellation following Order | *When Microsoft cancellation policy applies*  For Orders for which Microsoft policies permit cancellation within 72 hours following an Order being made:   * + 1. The Customer may request the Supplier to cancel the Order, or part of the Order, by giving written notification to the Supplier within 24 hours of the Order being placed by the Supplier with the Distributor, provided that the Customer’s written notification must be received by the Supplier during Working Hours. The Customer acknowledges that this 24-hour timeframe is required due to the 72-hour timeframe permitted by Microsoft and the processes to be followed by the Supplier for the Order to be cancelled within that 72-hour timeframe.     2. If a cancellation request is made by the Customer in accordance with (a) above, the Supplier will use its best endeavors to process the cancellation so that the cancellation occurs within the 72-hour time frame permitted by Microsoft.     3. Where Microsoft receives the cancellation within their 72-hour cancellation timeframe, the Customer will receive a pro-rata credit for the remainder of the term of the relevant subscriptions, based on Microsoft’s policies.   *When Microsoft cancellation policy does not apply*  For some Orders, the Microsoft 72-hour cancellation policy does not apply. If you request a cancellation in respect of an Order and the Microsoft cancellation policy does not apply to that Order, the Supplier will not be able to process the cancellation and will notify you accordingly.  The Supplier will, on request from the Customer, provide further details about when the cancellation policy applies and when it does not. |

1. Term of subscriptions

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| Subscription term and seat-count commitment | The Customer acknowledges and agrees that:   * + 1. The Supplier will place Orders for subscriptions:        1. For the term, or mix of terms (where applicable); and        2. For the seat-count,   requested by the Customer in the Order Request; and   * + 1. Except where immediate cancellation is available and an Order, or part of an Order, is cancelled in accordance with Part 4.4 above:        1. The term(s) in each case cannot be reduced; and        2. The subscriptions cannot be suspended by the Customer without ongoing payment for the full term of the subscriptions in accordance with this Agreement, and cannot be cancelled, during the applicable term; and the seat-count can be increased but cannot be decreased during the term of a subscription. |

1. Renewals

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| 6.1 Auto-renewal of subscriptions | * + 1. The Customer may notify the Supplier prior to the renewal date if it no longer requires a subscription, or if it wishes to change to an alternative subscription or increase or decrease the seat-count for a subscription. Any such notification must be in writing, or otherwise issued to the Supplier in the format requested and be received by the Supplier within 28 days prior to the renewal date or by the date specified by the Supplier in any written notification to the Customer. |
| 6.2 Scheduled subscription changes on renewal | When scheduling of subscription changes is available (as notified by the Supplier), the Supplier will schedule the changes requested by the Customer (to be requested as described below), and the changes will take effect for the renewal term / terms (as applicable) of the subscription and, subject to Part 6.1 above and this Part 6.2, for any subsequent renewal term.  When scheduling of subscription changes is available the Customer may notify the Supplier in writing or in the manner otherwise required by the Supplier, for the upcoming renewal term or mix of terms as to any required changes to:   1. The existing seat-count for a subscription, 2. The subscription types, 3. The term or mix of terms (if applicable).   or any other available changes (as applicable).  In the absence of changes being scheduled as described in this Part 6.2, the auto-renewal process in Part 6.1 applies. |

1. Basis of supply

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| Basis of Supply – Microsoft Customer Agreement | Microsoft Cloud Services are Ordered and provisioned by the Supplier subject to this Agreement and the applicable Microsoft Customer Agreement.  The Microsoft Customer Agreement applicable for the Customer is here: [Licensing Documents (microsoft.com)](https://www.microsoft.com/licensing/docs/customeragreement)  The Microsoft Customer Agreement is an agreement between Microsoft and the Customer and includes General Terms, Use Rights, SLAs (service level agreements) and any additional terms Microsoft presents when an order is placed (the terms ‘General Terms’, ‘Use Rights’ and ‘SLA’ are defined in the Microsoft Customer Agreement). |
| Receipt of Microsoft Customer Agreement | The Customer acknowledges receipt of the current Microsoft Customer Agreement from the Supplier and by authorising the Supplier to place Orders for Microsoft Cloud Services for the Customer, the Customer confirms:  - Its acceptance of the Microsoft Customer Agreement.  - That the Supplier is authorised by the Customer to confirm the Customer’s acceptance of the Microsoft Customer Agreement on behalf of the Customer. If required by the Supplier, the Customer will confirm its acceptance in writing.  The Customer acknowledges that the Supplier is not permitted to revise the Microsoft Customer Agreement in any way. |
| Subscription Renewals | If Microsoft updates the Microsoft Customer Agreement the Customer must accept the new Microsoft Customer Agreement at / before renewal of their subscription. The updated Microsoft Customer Agreement (if any) will be available at the above link or will be made available to the Customer prior to the subscription renewal. On renewal of a subscription, the Customer is deemed to have accepted the updated Microsoft Customer Agreement. |

1. Pricing and payment

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| Pricing | Pricing will not exceed standard Microsoft list price.  If a quote or proposal has been issued by the Supplier, pricing will be in accordance with the applicable quote or proposal (provided that the quote or proposal was still open for acceptance when accepted by the Customer).  Support agreement can be quoted separately to standalone product if required. |
| Payment amounts | Payment amounts will be based on Customer subscriptions and seat-counts as recorded on the Customer Account. |
| Timing of payment | Payments are due on the 16th of each month with one month in advanced for new agreements. Current agreements are 30 days in arrears.  Payments will be made through Direct Debit agreement on the 16th of the following month. |

1. Order of precedence

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| Order of precedence: | If there is any conflict or inconsistency between the parts of this Agreement, the following order of precedence applies to the extent of that conflict or inconsistency (listed from highest to lowest priority):   * + 1. the GDPR Attachment.     2. Terms and Conditions.     3. The Schedule. |

**Cloud supply agreement**

**TERMS & CONDITIONS**

1. Scope of Agreement
   1. The Supplier will supply provision, administer, and provide support (as applicable) for the Microsoft Cloud Services, and the Customer will pay the Supplier for the Microsoft Cloud Services in accordance with this Agreement.
2. Term
   1. This Agreement commences on the date that it is signed by both parties.
   2. This Agreement remains effective until terminated by either party under clause 16.
3. Customer Account
   1. For the purposes of this Agreement, the Customer is responsible for all activity in the Customer Account including without limitation all subscriptions (and the associated seat-count).
   2. The Supplier has no obligation, under this Agreement, to supervise or in any way monitor the Customer’s requests for subscriptions or the requested seat-count (or suitability of the Customer’s subscriptions).
4. Supplier Administrator Access
   1. The Customer acknowledges and agrees that:
      1. Once this Agreement is signed by both parties, the Customer will receive a link from the Supplier at which the Customer will confirm the Supplier as being its supplier of the Microsoft Cloud Services (unless this has already occurred).
      2. The Supplier and the Distributor will (following confirmation by the Customer under (a) above, unless this has already occurred):
         1. Be the Primary Administrator of the Microsoft Cloud Services for the Customer for the term of this Agreement; and
         2. Have administrative privileges and access to Customer Data and administrator data,
      3. The Customer may at any time request additional administrator privileges from the Supplier (if and to the extent available),
      4. The Customer can, at its sole discretion and at any time during the term of this Agreement, terminate the Supplier’s and the Distributor’s administrative privileges provided that any such termination under this clause does not alter the Customer’s payment obligations under this Agreement and will impact the support available to the Customer in respect of the Microsoft Cloud Services; and
      5. The Customer appoints the Supplier and the Distributor as its agent for the purposes of interfacing with and providing instructions to Microsoft for the purposes of this Agreement.
5. Subscriptions to Microsoft Cloud Services
   1. Nothing in this Agreement alters the rights and obligations of the Customer or Microsoft under the Microsoft Customer Agreement between Microsoft and the Customer which is accepted by the Customer (as described in part 6 of the Schedule) in respect of all Microsoft Cloud Services.
   2. The Customer acknowledges and agrees that Microsoft may send direct communications to the Customer related to the terms of the Microsoft Customer Agreement or the operation or delivery of the Microsoft Cloud Services.
6. Support for Microsoft Cloud Services
   1. The Supplier is the Customer’s point of contact for all operational and technical support questions related to the Microsoft Cloud Services.
   2. The Supplier’s support policies, support hours, incident response time and service levels are described in a separate agreement between the Supplier and Customer.
   3. If the Customer considers that it has a claim on the SLA (the ‘SLA’ being the service level commitments made by Microsoft to the Customer in respect of the Microsoft Cloud Services), the Customer must submit the claim to Microsoft in accordance with the Microsoft Customer Agreement and notify the Supplier in order for any applicable service credit to be channelled back through the Supplier and applied to your account with the Supplier.
   4. The Customer acknowledges that the Supplier cannot remedy, and has no obligation to seek to remedy, any defect or purported defect in the Microsoft Cloud Services that may be identified by the Customer and that the remedy (if any) that the Customer may have in relation to such defects is contained in and subject to the Customer’s applicable Microsoft Customer Agreement.
7. Adjustments to subscriptions
   1. The Customer may add fixed term subscriptions to Microsoft Cloud Services during the subscription term, by requesting the Supplier to make an adjustment or by making an adjustment itself. These adjustments will result in increased subscription costs.
8. Pricing and payment
   1. The Customer will pay all invoices issued by the Supplier to the Customer under this Agreement in full, without setoff, counterclaim, or deduction of any kind, on or before the due date.
   2. If the Customer wishes to dispute an invoice, it must notify the Supplier in writing prior to the due date of the invoice and provide details of the dispute. The Customer may withhold payment of the disputed part of an invoice only and must pay that part (or any amount subsequently agreed or determined to be the correct amount owing) promptly on resolution of the dispute. Without limiting the reasons that the Supplier may decline a disputed invoice claim, a claim by a Customer that a subscription or that the specified seat-count or any part of it was not needed by the Customer, will not relieve the Customer from its obligation to pay for the subscription or specified seat-count and will not provide a reason for validly disputing an invoice.
   3. Without the Supplier waiving any other right or remedy it may have, if any amount due is not paid by the Customer by the due date, the Supplier may:
      1. Charge the Customer interest calculated at 1.5% on the balance of the amount due by the Customer from the due date until payment is received in full by the Supplier; and/or
      2. Charge the Customer all collection costs reasonably incurred by the Supplier in collection of the amount outstanding (including solicitor and/or collection agency fees); and/or
      3. Suspend the relevant Microsoft Cloud Services (such that the Customer will not have access to those services) and/or decline to place any additional Orders for the Customer and/or may suspend delivery of services to the Customer under any other agreement between the Supplier and the Customer, until the outstanding amount is paid in full provided that any suspension of Microsoft Cloud Services under this clause 8.3(c) does not in any way suspend or alter the Customer’s obligation to pay for the relevant Microsoft Cloud Services for the full term of the relevant subscription(s). The Supplier will give 10 Working Days’ notice in writing of its intention to suspend Microsoft Cloud Services under this clause.
9. Taxes
   1. In addition to the amounts due under clause 8, the Customer will pay the Supplier amounts equal to any applicable government taxes or duties however designated, based on this Agreement (or the Microsoft Cloud Services provided under it), paid or payable by the Supplier in respect of the foregoing, exclusive however of taxes based on the Supplier’s income.
10. Customer Data
    1. Subject to clause 10.2, the Supplier may collect, use, transfer, disclose, and otherwise process the Customer Data as required in its performance of this Agreement.
    2. The Supplier will only access the Customer Data and disclose the Customer Data to law enforcement or government authorities to the extent required by law. If a request for Customer Data is made by a law enforcement agency or government authority (directly or through Microsoft), the Supplier will redirect the request to the Customer or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, the Supplier will notify the Customer of the request as soon as practically possible.
    3. The Customer will, as and to the extent required by law, notify individual users of the Microsoft Cloud Services, that their data may be disclosed to law enforcement or other government authorities (if a request is made by law enforcement or other government authorities). It is the Customer’s responsibility to obtain consent from individual users to the potential for disclosure under this clause.
    4. The Customer consents to Microsoft providing the Supplier and the Distributor with Customer Data and information that the Customer provides to Microsoft for the purposes of the Supplier and the Distributor ordering, provisioning, and administering the Microsoft Cloud Services.
11. Personal Data and Data Protection
    1. The Customer consents to the Processing of Personal Data by the Supplier for the purposes of this Agreement, in accordance with this Agreement including in particular the GDPR Attachment. Before providing Personal Data to the Supplier, Customer will obtain all required consents from third parties (including Customer’s contacts, partners, distributors, administrators, and employees) under applicable Data Protection Laws.
    2. The Customer acknowledges that Processing of Personal Data by Microsoft is addressed in the Microsoft Customer Agreement.
    3. To the extent permitted by applicable law and subject to applicable contractual rights and obligations, including the rights and obligations in the GDPR Attachment, Personal Data collected by the Supplier under this Agreement may be transferred, stored and processed in the United Kingdom and/or any other country (or countries) in which the Supplier maintains facilities or any other country in which the Supplier’s contractors or service providers (including for example Microsoft and other third party vendors) maintain facilities.
    4. In the event of any Personal Data Breach, the Supplier will comply with its obligations, including notification obligations, (if any), under the Data Protection Laws. The Customer acknowledges that the obligations that Microsoft may have in respect of a Personal Data Breach, where applicable, are addressed in the Microsoft Customer Agreement.
12. Confidential Information
    1. Each party agrees to:
       1. Hold in confidence all Confidential Information disclosed to it by the other party including, but without limitation, information which:
          1. Comes into its possession as a result of, or in the performance of, this Agreement; or
          2. Is confidential and clearly so identified; or
          3. Involves business plans or financial and personnel affairs, and
       2. Take reasonable steps to:
          1. Protect the other party’s Confidential Information,
          2. Use the Confidential Information only for the purposes of this Agreement; and
          3. Protect the Confidential Information from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.
    2. A party may disclose the other party’s Confidential Information if and to the extent required by law if it first notifies the other party of the obligation to disclose the Confidential Information, provided that a party is not required to notify the other party under this clause if it is not legally permitted to do so or if the timing within which the party is required by law to disclose the Confidential Information does not permit notification to the other party.
13. Intellectual property
    1. Refer to the Microsoft Customer Agreement.
14. No warranties
    1. To the extent permitted by law, all warranties, terms, and conditions (including without limitation, warranties, and conditions as to fitness for purpose and merchantability) implied by legislation or otherwise, are excluded by the Supplier.
15. Warranty position for Microsoft Cloud Services
    1. The Supplier will use reasonable endeavour’s to assist the Customer to deal with Microsoft on any warranty claims in respect of the Microsoft Cloud Services.
    2. Subject to clause 6 and clause 15.1, the Supplier has no obligations in respect of defects, support requirements or otherwise for the Microsoft Cloud Services including without limitation that in the event of any defect or failure of the Microsoft Cloud Services the Supplier has no obligation to provide any interim hardware, software, other equipment, or remedial service.
16. Termination of Agreement
    1. Except where the Customer has unexpired subscriptions (whether initial term or renewal term) to Microsoft Cloud Services, either party may terminate this Agreement on 30 days’ written notice to the other party.
    2. Either party may terminate this Agreement immediately (or with effect from any later date that it may nominate) by written notice to the other party if the other party ceases business or if one or more Insolvency Event occurs in relation to that other party. For the purposes of this clause, ‘Insolvency Event’ means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):
       1. A receiver, manager or liquidator is appointed over the party’s undertaking / assets, or the party enters any assignment, composition, or arrangement with its creditors; or
       2. The party is unable to pay its debts when due or is deemed unable to pay its debts under any law or suspends payment to its creditors.
    3. Without limiting any other rights of termination that a party may have, either party may terminate this Agreement on written notice to the other party if the other party:
       1. Commits a material breach of any of its obligations under this Agreement; and
       2. Fails to remedy that breach within 30 days of prior written notice of such breach.
    4. This Agreement will automatically terminate if the Supplier’s agreement with its distributor under which the Supplier is authorised to resell the relevant Microsoft Cloud Services terminates for any reason.
17. Consequences of termination
    1. On termination of this Agreement
       1. Where the Customer has unexpired subscriptions for Microsoft Cloud Services, the Customer will pay the Supplier for the full fixed term (excluding any renewal term to which the Customer is not yet contractually committed under this Agreement).
    2. On termination of this Agreement the Supplier will issue invoices to the Customer for all amounts specified in clause 17.1 for which no invoice has yet been issued and all such invoices will be due seven days following the date of the invoice. Invoices issued prior to the date of termination will remain due in accordance with the terms of the invoice.
    3. On termination of a subscription the Customer will have 30 days to migrate any Customer Data to either a new subscription or another service.
18. Liability
    1. The limitations of liability in this clause 18 do not apply to claims by the Customer for bodily injury or damage to real property or tangible personal property for which the Supplier is legally liable.
    2. The Supplier’s liability under this Agreement is limited to direct loss only, to the amount paid by the Customer to the Supplier in the six month period preceding the event giving rise to the claim.
    3. In no event is the Supplier liable to the Customer for the Microsoft Cloud Services, including without limitation in terms of performance, non-performance, availability, non-availability, compliance, or non-compliance with specifications of the Microsoft Cloud Services or otherwise. Any right or remedy that the Customer may have in relation to the Microsoft Cloud Services is included or referenced in the Microsoft Customer Agreement.
    4. In no event is the Supplier liable for any indirect loss or for any loss of profits, lost savings, loss of data, business interruption, incidental or special damages, or for any consequential loss. In addition, the Supplier is not liable for any damages claimed by the Customer based on any third-party claim, including, but not limited to, any claim in negligence. In no event is the Supplier liable for any damages caused (whether directly or indirectly) by the Customer’s failure to perform its responsibilities under this Agreement.
19. Dispute Resolution
    1. In the event of any dispute arising between the parties in relation to this Agreement, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 19.
    2. The party initiating the dispute (“the first party”) must provide written notice of the dispute to the other party (“the other party”) and nominate in that notice the first party’s representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.
    3. If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.
20. Non-Solicitation
    1. Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party’s personnel (including employees and contractors). This clause will apply during the term of this Agreement and for six months after termination of the Agreement.
    2. A party may as a condition of granting its consent under clause 20.1 above, require the other party to pay to it a fee of 25% of the person’s gross annual remuneration to cover the cost of replacing the employee or contractor.
21. Notices
    1. Any notice or other communication in connection with this Agreement must be:
       1. Marked for the attention of the person specified in part 1 or part 2 of the Schedule or any replacement person notified in writing by the relevant party; and
       2. Left at the address or sent by prepaid post or email to the address of the relevant party specified in part 1 or part 2 of the Schedule or any replacement address notified by that party.
    2. Notices or other communications are deemed received:
       1. If delivered by hand on delivery,
       2. If delivered by post:
          1. On the third Working Day following posting if sent and received locally (not internationally); and
          2. On the tenth day following posting if posted internationally; or
       3. If sent by email, on sending the email unless the sender receives a delivery notification failure.
22. Force majeure
    1. Either party may suspend its obligations to perform under this Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.
    2. Where a party's obligations have been suspended pursuant to clause 22.1 for a period of 30 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other party.
23. General
    1. Independent Contractor: The Supplier is an independent contractor to the Customer and nothing in this Agreement will be taken as constituting the Supplier to be an employee, partner, or agent of the Customer.
    2. Assignment: The Customer is not permitted to assign its rights under this Agreement without the prior written consent of the Supplier.
    3. Other agreements: Nothing in this Agreement prevents the Supplier from entering into the same or similar agreements with other customers.
    4. Survival: All clauses of this Agreement, which by their nature survive the termination of this Agreement will do so.
    5. Entire agreement: This Agreement, together with all Orders, constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. The Microsoft Customer Agreement is a separate agreement between Microsoft and the Customer.
    6. Further assurances: The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by this Agreement.
    7. Amendments: Except as specifically provided, no amendment to this Agreement will be effective unless it is in writing and signed by both parties.
    8. Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.
    9. Partial invalidity: If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
24. Governing Law
    1. This Agreement is governed by the laws of Republic of Ireland. The parties hereby submit to the non-exclusive jurisdiction of the courts of Republic of Ireland.
25. Interpretation and definitions
    1. In this Agreement:

**“Agreement”** means this Cloud Supply Agreement and includes the Schedule and these terms and conditions, and the GDPR Attachment.

**“Confidential Information”** means any information disclosed in confidence to one party by the other party including without limitation the Customer Data, whether of a business, financial, technical, or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:

* + 1. On receipt by the recipient party, in the public domain or which subsequently enters the public domain without any breach of this Agreement,
    2. On receipt by the recipient party, already known by that party (otherwise than as a result of disclosure by the other party),
    3. At any time after the date of receipt by the recipient party, received in good faith by the recipient party from a third party,
    4. Required by law to be disclosed by the recipient party,

**“Customer Account”** means the Customer’s account on the Distributor’s portal.

**“Customer Data”** means all data, including all text, sound, video or image files and software, and which may include Personal Data, that is provided to Microsoft by or on behalf of the Customer through use of the Microsoft Cloud Services.

**“Data Protection Laws”** means the GDPR as incorporated into Irish Law by the UK Data Protection Act 2018, and the UK Data Protection Act 2018 itself, and includes any statutory modification or re-enactment of such laws for the time being in force.

**“Distributor”** means the Supplier’s distributor, being Vuzion Ireland.

**“Existing Services”** means the Customer’s current Microsoft seat-based cloud subscriptions (and associated seat-counts) as at the date of this Agreement, for which the Supplier is the Primary Administrator as at the date of this Agreement.

**“Force Majeure Event”** means any war, riot, pandemic, civil emergency, third party strike, epidemic, pandemic, civil emergency, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party.

**“GDPR”** means the EU General Data Protection Regulation 2016/679.

**“Intellectual Property”** means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property.

**“****Microsoft Cloud Services”** means:

* + 1. The Existing Services (if any),
    2. The Transferred Services (if any); and
    3. The Microsoft seat-based cloud subscriptions (and associated seat-counts) Ordered by the Supplier for the Customer as described in part 4 of the Schedule

as recorded in the Customer Account and includes in each case (to the extent that the context permits), all renewals of subscriptions in accordance with this Agreement.

**“Order”** means an order for Microsoft seat-based services made by the Supplier following receipt of and in accordance with an Order Request from the Customer (as described in Part 4 of the Schedule), and **“Ordered”** has a corresponding meaning.

**“Order Request”** means an order request made by the Customer as described in Part 4 of the Schedule.

**“Personal Data”** means any information relating to an identified or identifiable natural person, or any equivalent definition in the Data Protection Laws.

**“Personal Data Breach”** has the meaning given to that term in the Data Protection Laws (and includes unauthorised access to, unauthorised disclosure of, or loss of, Personal Data), in respect of Personal Data that is Processed by the Supplier under this Agreement).

**“Primary Administrator”** means that the Supplier has administrator privileges in respect of the Customer’s subscriptions (and associated seat counts), as described in the Microsoft Customer Agreement.

**“Processing”** has themeaning given to that term in the Data Protection Laws, in respect of any operation which is performed on Personal Data by the Supplier (whether or not by automated means, and includes but is not limited to collection, recording or storage of the Personal Data), and ‘Process’ and ‘Processed’ has/have a corresponding meaning.

**“Schedule”** means the schedule that precedes these terms and conditions.

**“Transferred Services”** means Microsoft seat-based cloud subscriptions (and associated seat-counts) that were purchased for the Customer by another partner and that, with the Customer’s authorisation, have been transferred to the Supplier in the Microsoft Partner Centre on or after the date of this Agreement (so that, following the transfer, the Supplier is the Primary Administrator for those subscriptions).

**“Working Day”** means a day other than a Saturday, Sunday, or public holiday in Ireland.

**“Working Hours”** means the hours of 9:00am to 5.30pm on Working Days.

* 1. **Interpretation**
     1. In this Agreement, reference to the plural includes reference to the singular, and vice versa.
     2. Headings inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.
     3. The word "includes" means ‘includes without limitation’, and “including” has a corresponding meaning.
     4. Reference to any legislation includes any statutory modification or re-enactment of that Act for the time being in force.

**GDPR attachment**

Under this Agreement, the Customer engages the Supplier to provide the Services and in providing the Services, the Supplier will or may be required to Process Personal Data on behalf of the Customer. To the extent of that Processing of Personal Data and for the purposes of this Agreement, the Customer is a ‘Controller’ and the Supplier is a ‘Processor’ for the purposes of the GDPR. As such, Article 28 of the GDPR requires that the details in this attachment are included in the contract between the Customer and the Supplier.

The parties must set out the subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subjects – see appendix 1 to this attachment. If the Supplier determines the purposes and means of Processing, the Supplier is considered a ‘Controller’ in respect of that Processing in which case the Supplier needs to consider and address the different and additional provisions of the GDPR that apply.

The terms used in this attachment have the meanings given to them in the main definition section of this Agreement or in clause 13 of this attachment, or in the GDPR if not defined in this Agreement.

1. Processing of Personal Data
   1. The Supplier will:
      1. Instructions from Customer: In providing Services under this Agreement, Process Personal Data only on the Customer’s documented instructions (as provided in clause 2 and in appendix 1 to this attachment or otherwise in writing) unless required to do so by the Data Protection Laws in which case the Supplier will inform the Customer of that legal requirement before Processing unless the Supplier is prohibited from informing the Customer by that law.
      2. Confidentiality: Ensure that the Supplier’s personnel who are authorised to Process the Personal Data have obligations of confidentiality to the Supplier (including as required in clause 3 below) in respect of the Personal Data or are under an appropriate statutory obligation of confidentiality.
      3. Security: Comply with the security obligations in clause 4 below.
      4. Subprocessors: Comply with the provisions relating to Subprocessors in clause 5 below.
      5. Data subjects’ rights: Provide assistance to the Customer with responding to data subjects’ rights in accordance with clause 6 below.
      6. Assist Customer: Comply with its obligations to assist the Customer in relation to security of Personal Data and data protection impact assessments and prior consultation in accordance with clause 7 below.
      7. Deleting and retuning data: After the provision of Services related to Processing of Personal Data has ended, at the choice of the Customer either delete or return to the Customer all of that Personal Data and delete existing copies unless the Data Protection Laws require storage of Personal Data in accordance with clause 8 below; and
      8. Compliance and audits: Make available to the Customer all information necessary to demonstrate compliance with Article 28 of the GDPR and allow for and contribute to audits including inspections conducted by the Customer or another auditor mandated from time to time, in accordance with clause 9 below. The Supplier will immediately inform the Customer if, in its opinion, an instruction received from the Customer infringes the Data Protection Laws.
2. **Instructions from Customer**
   1. The Customer instructs the Supplier (and authorises the Supplier to instruct each Subprocessor) to:
      1. Process Personal Data; and
      2. Transfer Personal Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with and in compliance with this Agreement.

* 1. The Customer warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in clause 2.1 on behalf of the Customer.

1. **Confidentiality** 
   1. The Supplier will take reasonable steps to ensure the reliability of its employees, agents or contractors who may have access to Personal Data, ensuring in each case that access is limited to those individuals who need to know or need to access the relevant Personal Data, as necessary for the purposes of this Agreement, and to comply with applicable laws in the context of that individual's duties to the Supplier, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.
2. **Security**
   1. Subject to clause 4.2 below, the Supplier will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including amongst other things as appropriate:
      1. The pseudonymisation and encryption of Personal Data,
      2. The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services,
      3. The ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident,
      4. A process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.
   2. In assessing the appropriate level of security for clause 4.1 above, the Supplier will take account in particular of the risks of a Personal Data Breach that are presented by the Processing to be undertaken under this Agreement.
   3. The Supplier will in relation to Personal Data:
      1. Implement and maintain appropriate information security to protect Personal Data against:
         1. A Personal Data Breach.
         2. All other unauthorised or unlawful forms of Processing; and
         3. Any breach of the Supplier’s information security obligations in this attachment. The Supplier will (and will ensure that its Sub-processors) provide full cooperation and assistance to the Customer in ensuring that the individuals´ rights under the Data Protection Laws are timely and appropriately addressed for the fulfilment of the Customer’s obligation to respond without undue delay to requests by such individuals as required by Data Privacy Laws, including the rights of subject access, rectification, erasure, and portability, and the right to restrict or object to certain Processing;
      2. Take reasonable steps to inform its staff, and any other person acting under its supervision, of the responsibilities of any Data Privacy Laws due to the incidental access to Personal Data and ensure the reliability of its staff and any other person acting under its supervision who may come into contact with, or otherwise have access to and Process, such Personal Data.
3. **Subprocessors**
   1. The Customer authorises the Supplier to appoint Subprocessors (and permits each Subprocessor appointed in accordance with this clause 5 to appoint Subprocessors) in accordance with this clause 5 and any restrictions in this Agreement.
   2. The Supplier will give the Customer prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within two weeks of receipt of that notice, the Customer notifies the Supplier in writing of any objections (on reasonable grounds) to the proposed appointment, the Supplier will not appoint (nor disclose any Personal Data to) the proposed Subprocessor unless and until it obtains the prior written consent of the Customer.
   3. With respect to each Subprocessor, the Supplier will:
      1. Enter into an agreement with the Subprocessor which includes the same data protection obligations as set out in this attachment (and Appendix 1) and includes sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. If the Subprocessor fails to fulfil its data protection obligations, the Supplier will remain fully liable to the Customer for the performance of that Sub processor’s obligations.
      2. If the Processing by the Subprocessor will involve a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between the Supplier and the Subprocessor; and
      3. Provide to the Customer for review, copies of the Supplier’s agreements with Subprocessors (confidential commercial information that is not relevant to the requirements of this attachment may be blacked out) as the Customer may request from time to time.
   4. Appendix 1 to this attachment sets out certain information regarding the Supplier’s Processing of Personal Data, as required by article 28(3) of the GDPR. The Customer may make reasonable amendments to Appendix 1 by written notice to the Supplier from time to time as the Customer reasonably considers necessary to meet those requirements.
4. **Data Subjects’ Rights**
   1. Considering the nature of the Processing, the Supplier will, by implementing appropriate technical and organisational measures to the extent described in clause 4, assist the Customer to respond to requests to exercise Data Subject rights under the Data Protection Laws.
   2. The Supplier will:
      1. Promptly notify the Customer if the Supplier or any Subprocessor receives a request from a Data Subject under any Data Protection Law in respect of Personal Data; and
      2. Ensure that the Supplier or relevant Subprocessor does not respond to that request except on the documented instructions of the Customer or as required by Applicable Laws to which they are subject, in which case the Supplier will to the extent permitted by Applicable Laws inform the Customer of that legal requirement before the Supplier or relevant Subprocessor responds to the request.
5. **Assist Customer**
   1. Assist Customer with Security of Processing:
      1. The Supplier will assist the Customer in respect of the Customer’s obligations to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, by complying with the Supplier’s obligations under clause 4 of this attachment.
   2. Assist Customer with notifications of Personal Data Breach
      1. The Supplier will notify the Customer without undue delay if the Supplier or any Subprocessor becomes aware of a Personal Data Breach, providing the Customer with sufficient information to allow the Customer to meet any obligations to report the Personal Data Breach to the relevant Supervisory Authority under the Data Protection Laws (noting that the Customer is required, where feasible, to notify applicable Personal Data breaches to the relevant Supervisory Authority within 72 hours after having become aware of the breach).
      2. The Supplier will co-operate with the Customer and take such reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation, and remediation of each such Personal Data Breach.
   3. Assist Customer with communication of Personal Data breach to Data Subject
      1. Where a Personal Data Breach is likely to result in a high risk to the rights and freedoms of natural persons:
         1. Such that the Customer is required to communicate the Personal Data Breach to the Data Subject (including where, despite the conditions referenced in clause 7.3(a)(ii) below being met, the Supervisory Authority has required the Customer to communicate the Personal Data Breach to the Data Subject), the Supplier will assist the Customer in doing so by providing all relevant information as may be reasonably required by the Customer,
         2. But despite that high risk, the Customer is not required to communicate the Personal Data Breach to the Data Subject due to certain conditions being met (such as that the Personal Data is encrypted and so unintelligible to any person not authorised to access it), the Supplier will assist the Customer by providing all relevant information as may be reasonably required by the Customer.
   4. Assist Customer with Data Protection Impact Assessments
      1. The Supplier will provide reasonable assistance to the Customer with any data protection impact assessments which the Customer reasonably considers to be required of the Customer by Article 35 of the GDPR or equivalent provisions of related Data Protection Laws. The Supplier’s obligations under this clause 7.4 (a) are solely in relation to Processing of Personal Data by the Supplier and considering the nature of the Processing and information available to the Supplier.
   5. Assist Customer with Prior Consultation with Supervisory Authority
      1. The Supplier will provide reasonable assistance to the Customer with prior consultations with Supervising Authorities or other competent data privacy authorities, which the Customer reasonably considers to be required of the Customer by Article 36 of the GDPR or equivalent provisions of related Data Protection Laws. The Supplier’s obligations under this clause 7.5 (a) are solely in relation to Processing of Personal Data by the Supplier and considering the nature of the Processing and information available to the Supplier.
6. **Deletion or return of Personal Data**
   1. Subject to clauses 8.2 and 8.3, the Supplier will, within two weeks of the date of expiration or termination of Services involving the Processing of Personal Data (the "End of Processing Date"), delete and procure the deletion of all copies of the Personal Data.
   2. Subject to clause 8.3, the Customer may in its absolute discretion by written notice to the Supplier within two weeks of the End of Processing Date require the Supplier to:
      1. Return a complete copy of all Personal Data to the Customer by secure file transfer in such format as is reasonably notified by the Customer to the Supplier; and
      2. Delete and procure the deletion of all other copies of Personal Data Processed by the Supplier. The Supplier will comply with any such written request within two weeks of the End of Processing Date.
   3. The Supplier may retain Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that the Supplier will:
      1. Ensure the confidentiality of all such Personal Data.
      2. Ensure that such Personal Data is only processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
   4. The Supplier will provide written certification to the Customer that it has fully complied with this clause 8 within two weeks following the End of Processing Date.
7. **Audit rights**
   1. Subject to clauses 9.2 to 9.4, the Supplier will make available to the Customer on request all information necessary to demonstrate compliance with this attachment, and will allow for and contribute to audits, including inspections, by the Customer or an auditor mandated by the Customer in relation to the Processing of Personal Data by the Supplier.
   2. Information and audit rights of the Customer only arise under clause 9.1 to the extent that this Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Laws (including, where applicable, article 28(3)(h) of the GDPR).
   3. The Supplier may, on reasonable grounds, object to the proposed auditor in which case the Customer will propose an alternate auditor.
      1. The Customer will give the Supplier reasonable notice of any audit or inspection to be conducted under clause 9.1 and will make (and ensure that its auditor makes) reasonable endeavours to avoid causing any damage, injury or disruption to the Supplier's premises, equipment, personnel, and business while its personnel are on those premises in the course of such an audit or inspection. The Supplier need not give access to its premises for the purposes of such an audit or inspection for the purposes of more than one audit or inspection in any calendar year, except for any additional audits or inspections which:
         1. The Customer reasonably considers necessary because of genuine concerns as to the Supplier's compliance with this attachment; or
         2. The Customer is required or requested to carry out by Data Protection Law, a Supervisory Authority, or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory, where the Customer has identified its concerns or the relevant requirement or request in its notice to the Supplier of the audit or inspection.
8. **Restricted Transfers**
   1. The Customer acknowledges that in providing Personal Information to the Supplier under this Agreement, there is no Restricted Transfer given that the Supplier is in the United Kingdom.
   2. Subject to clause 10.3, where the Services involve a ‘Restricted Transfer’, the Customer (as "data exporter") and the Supplier (as "data importer") each agrees to the Standard Contractual Clauses in respect of that Restricted Transfer.
   3. The Standard Contractual Clauses will come into effect under clause 10.1 on the later of:
      1. The data exporter becoming a party to them,
      2. The data importer becoming a party to them; and
      3. Commencement of the relevant Restricted Transfer.
   4. There is no requirement for the Supplier and Customer to agree to the Standard Contractual Clauses (or to include the Standard Contractual Clauses in this Agreement) where the transfer of Personal Data is to a country within the EEA or to an Approved Jurisdiction.
9. **Order of precedence**
   1. Nothing in this attachment reduces the Supplier's obligations under this Agreement in relation to the protection of Personal Data or permits the Supplier to Process (or permit the Processing of) Personal Data in a manner which is prohibited by this Agreement. In the event of any conflict or inconsistency between this attachment and the Standard Contractual Clauses, the Standard Contractual Clauses will prevail.
   2. Subject to clause 11.1, in the event of inconsistencies between the provisions of this attachment and the other parts of this Agreement, the provisions of this attachment will prevail.
10. **Changes in Data Protection Laws**
    1. The Customer may by at least 30 calendar days' written notice to the Supplier:
       1. Vary the Standard Contractual Clauses (if applicable), as they apply to Restricted Transfers which are subject to non-UK data protection laws, as required as a result of any change in, or decision of a competent authority under, that data protection law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that data protection law; and
       2. Propose any other variations to this attachment which the Customer reasonably considers to be necessary to address the requirements of any data protection law.
    2. If the Customer gives notice under clause 12.1(a):
       1. The Supplier will promptly co-operate (and require affected Subprocessors to promptly co-operate) to ensure that equivalent variations are made to the agreements made under clause 5.3; and
       2. The Customer will not unreasonably withhold or delay agreement to any consequential variations to this attachment proposed by the Supplier to protect the Supplier against additional risks associated with the variations made under this clause 12.2.
    3. If the Customer gives notice under clause 12.1(b), the parties will promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in the Customer's notice as soon as is reasonably practicable.
11. **Definitions**

In this attachment:

**“Contracted Processor”** means the Supplier or a Sub processor.

**"Data Subject"** means an identified or identifiable natural person, or any updated definition of this term from time to time in the GDPR.

**"EEA"** means the European Economic Area.

**“Information Security Obligations”** means commercially reasonable and appropriate physical, technical and organisational security measures (determined with regard to risks associated with the Processing of Personal Data as part of the Services), including the measures set out in this Agreement and in particular in the Standard Contractual Clauses (where applicable).

**"Restricted Transfer"** means transferring Personal Data outside of the United Kingdom, whether this is:

* + 1. A transfer of Personal Data from the Customer to the Supplier or to a Subprocessor; or
    2. An onward transfer of Personal Data from one Contracted Processor to another Contracted Processor, or between two establishments of a Contracted Processor,

In each case, where such transfer means would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws), in the absence of the Standard Contractual Clauses.

**"Services"** means, for the purposes of this GDPR Attachment, the Microsoft Cloud Services and any related services supplied to or carried out by or on behalf of the Supplier for the Customer under this Agreement.

**"Subprocessor"** means any person (including any third party but excluding an employee of the Supplier or any of its sub-contractors) appointed by or on behalf of the Supplier to Process Personal Data on behalf of the Customer in connection with this Agreement.

**“Standard Contractual Clauses”** means the standard contractual clauses issued by the European Commission (EU controller to non-EU or EEA processor), varied as permitted for the UK context, which, if applicable, are in Appendix 2 to this attachment.

The term **"Supervisory Authority"** has the meaning given to that term in the GDPR.