

## Standard Contract

Updated March 2019

This Standard Contract ("Agreement") is between you ("you" or "Customer") and the publisher ("Publisher") from which you are procuring Offerings (defined below) and governs your use of Offerings purchased through Azure Marketplace and AppSource Marketplace (collectively, "Marketplace").

This Agreement is the parties' entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms. This Agreement applies to all Orders entered into under this Agreement. Capitalized terms have the meanings given under "Definitions."

***Microsoft has created this template Standard Contract in order to facilitate a transaction between Publisher and Customer. Both parties acknowledge that Microsoft is not a party to this Agreement, nor in anyway responsible for the parties' actions or obligations under this Agreement. Microsoft's relationship with Customer and Publisher is solely governed by Microsoft's respective agreements with those parties; Microsoft otherwise disclaims all liability resulting from this Agreement (including any Orders).***

### **I. License to Offerings**

- a. License grant.** Offerings are licensed and not sold. Upon Microsoft's acceptance of an Order, and subject to Customer's compliance with this Agreement, Publisher grants Customer a nonexclusive and limited license to use the ordered Offerings. These licenses are solely for Customer's own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.
- b. Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order, unless renewed. Licenses granted for metered Offerings billed periodically based on usage continue as long as Customer continues to pay for its usage of the Offerings. All other licenses become perpetual upon payment in full.
- c. End Users.** Customer will control access to and use of the Offerings by End Users and is responsible for any use of the Offerings that does not comply with this Agreement.
- d. Affiliates.** Customer may order Offerings for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Publisher. Customer will remain responsible for all obligations under this Agreement and for its Affiliates' compliance with this Agreement and any applicable Order(s).
- e. Reservation of Rights.** Publisher reserves all rights not expressly granted in this Agreement. Offerings are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use Offerings on a device do not give Customer any right to implement Publisher's patents or other intellectual property in the device itself or in any other software or devices.
- f. Restrictions.** Except as expressly permitted in this Agreement, Documentation or an Order, Customer must not (and is not licensed to):
  - (1) copy, modify, reverse engineer, decompile, or disassemble any Offering, or attempt to do so;
  - (2) install or use any third-party software or technology in any way that would subject

Publisher's intellectual property or technology to any other license terms;

- (3) work around any technical limitations in an Offering or restrictions in Documentation;
- (4) separate and run parts of an Offering on more than one device;
- (5) upgrade or downgrade parts of an Offering at different times;
- (6) use an Offering for any unlawful purpose;
- (7) transfer parts of an Offering separately; or
- (8) distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party.

**g. License transfers.** Customer may only transfer fully-paid, perpetual licenses to (1) an Affiliate or (2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of (A) a divestiture of all or part of an Affiliate or (B) a merger involving Customer or an Affiliate. Upon such transfer, Customer must uninstall and discontinue using the licensed Offering and render any copies unusable. Customer must notify Publisher of a License transfer and provide the transferee a copy of this Agreement and any other documents necessary to show the scope, purpose, and limitations of the licenses transferred. Attempted license transfers that do not comply with this section are void.

**h. Feedback.** Any Feedback is given voluntarily, and the provider grants to the recipient, without charge, a non-exclusive license under provider's owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialize the Feedback as part of any of recipient's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential. The provider retains all other rights in any Feedback and limits the rights granted under this section to licenses under its owned or controlled non-patent intellectual property rights in the Feedback (which do not extend to any technologies that may be necessary to make or use any product or service that incorporates, but are not expressly part of, the Feedback, such as enabling technologies).

## **II. Privacy.**

**a. EU Standard Contractual Clauses.** To the extent applicable, the parties will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland. All transfers of Customer Data out of the European Union, European Economic Area, and Switzerland will be governed by the Standard Contractual Clauses, as designated by the European Commission, made available by the Publisher at the applicable URL for such terms or as otherwise communicated to Customer.

**b. Personal Data.** Customer consents to the processing of Personal Data by Publisher and its Affiliates, and their respective agents and Subcontractors, as provided in this Agreement. Before providing Personal Data to Publisher, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable privacy and Data Protection Laws.

**c. Processing of Personal Data; GDPR.** To the extent Publisher is a processor or subprocessor of Personal Data subject to the GDPR, the Standard Contractual Clauses govern that processing and the parties also agree to the following terms in this subsection ("Processing of Personal Data; GDPR"):

- (1) **Processor and Controller Roles and Responsibilities.** Customer and Publisher agree that Customer is the controller of Personal Data and Publisher is the processor of such data, except when (a) Customer acts as a processor of Personal Data, in which case Publisher is a subprocessor or (b) stated otherwise in any Offering-specific terms. Publisher will process Personal Data only on documented instructions from Customer. In any instance where the GDPR applies and Customer is a processor, Customer warrants to Publisher that Customer's instructions, including appointment of Processor as a processor or subprocessor, have been authorized by the relevant controller.
- (2) **Processing Details.** The parties acknowledge and agree that:
  - (A) the subject-matter of the processing is limited to Personal Data within the scope of the GDPR;
  - (B) the duration of the processing will be for the duration of the Customer's right to use the Offering and until all Personal Data is deleted or returned in accordance with Customer instructions or the terms of this Agreement;
  - (C) the nature and purpose of the processing will be to provide the Offering pursuant to this Agreement;
  - (D) the types of Personal Data processed by the Offering include those expressly identified in Article 4 of the GDPR; and
  - (E) the categories of data subjects are Customer's representatives and end users, such as employees, contractors, collaborators, and customers, and other data subjects whose Personal Data is contained within any data made available to Publisher by Customer.
- (3) **Data Subject Rights; Assistance with Requests.** Publisher will make information available to Customer in a manner consistent with the functionality of the Offering and Publisher's role as a processor of Personal Data of data subjects and the ability to fulfill data subject requests to exercise their rights under the GDPR. Publisher will comply with reasonable requests by Customer to assist with Customer's response to such a data subject request. If Publisher receives a request from Customer's data subject to exercise one or more of its rights under the GDPR in connection with an Offering for which Publisher is a data processor or subprocessor, Publisher will redirect the data subject to make its request directly to Customer. Customer will be responsible for responding to any such request including, where necessary, by using the functionality of the Offering. Publisher will comply with reasonable requests by Customer to assist with Customer's response to such a data subject request.
- (4) **Use of Subprocessors.** Customer consents to Publisher using the subprocessors listed at the applicable Publisher URL or as otherwise communicated to Customer. Publisher remains responsible for its subprocessors' compliance with the obligations herein. Publisher may update its list of subprocessors from time to time, by providing Customer at least 14-days notice before providing any new subprocessor with access to Personal Data. If Customer does not approve of any such changes, Customer may terminate any subscription for the affected Offering without penalty by providing, prior to expiration of the notice period, written notice of termination that includes an explanation of the grounds for non-approval.
- (5) **Records of Processing Activities.** Publisher will maintain all records required by Article

30(2) of the GDPR and, to the extent applicable to the processing of Personal Data on behalf of Customer, make them available to Customer upon request.

### **III. Confidentiality.**

- a. **Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, the terms of this Agreement, and Customer's account authentication credentials. Confidential Information does not include information that: (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products or services.
- b. **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.
- c. **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.
- d. **Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted by Publisher; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

### **IV. SLAs.**

Publisher may offer further availability and support obligations for an Offering. Such service level agreement ("SLA") will be made available by the Publisher at the applicable URL for such SLA or as otherwise communicated to Customer.

### **V. Verifying compliance.**

Customer must keep records relating to Offerings it and its Affiliates use or distribute. At Publisher's expense, Publisher may verify Customer's and its Affiliates' compliance with this Agreement at any time upon 30 days' notice. To do so, Publisher may engage an independent auditor (under nondisclosure obligations) or ask Customer to complete a self-audit process. Customer must promptly provide any information and documents that Publisher or the auditor reasonably requests related to the verification and access to systems running the Offerings. If verification or self-audit reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Publisher's other remedies, if unlicensed use is 5% or more of Customer's total use of all Offerings, Customer must reimburse Publisher for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

Nothing in this section limits Customer's right to audit Publisher under the GDPR provisions.

**VI. Representation and warranties.**

Publisher continuously represents and warrants that:

- a. it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement;
- b. its performance will not violate any agreement or obligation between it and any third party;
- c. the Offering will substantially conform to the Documentation;
- d. the Offering will not:
  - (1) to the best of Publisher's knowledge, infringe or violate any third party patent, copyright, trademark, trade secret, or other proprietary right; or
  - (2) contain viruses or other malicious code that will degrade or infect any products, services, software, or Customer's network or systems, and
- e. while performing under this Agreement, Publisher will comply with law, including Data Protection Laws and Anti-Corruption Laws, and will provide training to its employees regarding Anti-Corruption Laws.

***Disclaimer. Except as expressly stated in this Agreement, the Offering is provided as is. To the maximum extent permitted by law, Publisher disclaims any and all other warranties (express, implied or statutory, or otherwise) including of merchantability or fitness for a particular purpose, whether arising by a course of dealing, usage or trade practice, or course of performance.***

**VII. Defense of third-party claims.**

- a. **By Customer.** Customer will defend Publisher and its Affiliates from and against any and all third party claims, actions, suits, proceedings arising from or related to Customer's or any authorized user's violation of this Agreement or user terms (a "Claims Against Publisher"), and will indemnify Publisher and its Affiliates for all reasonable attorney's fees incurred and damages and other costs finally awarded against Publisher or its Affiliates in connection with or as a result of, and for amounts paid by Publisher or its Affiliates under a settlement Customer approves of in connection with a Claim Against Publisher. Publisher must provide Customer with prompt written notice of any Claims Against Publishers and allow Customer the right to assume the exclusive defense and control of the claim, and cooperate with any reasonable requests assisting Customer's defense and settlement of such matter.
- b. **By Publisher.** Publisher will defend Customer from and against any and all third party claims, actions, suits, proceedings, and demands alleging that the use of the Offering as permitted under the Contract infringes or misappropriates a third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer for all reasonable attorney's fees incurred and damages and other costs finally awarded against Customer in connection with or as a result of, and for amounts paid by Customer under a settlement Publisher approve of in connection with a Claim Against Customer; provided, however, that the Publisher has no liability if a Claim Against Customer arises from: (1) Customer Data or non-Publisher products, including third-party software; and (2) any modification, combination or development of the Offering that is not performed or authorized in writing by Publisher, including in the use of any application programming interface (API). Customer must provide Publisher with prompt written notice of any Claim Against Customer and allow Publisher the right to assume the exclusive defense and control, and cooperate with any reasonable requests assisting Publisher's defense and settlement of such matter. This section states

Publisher sole liability with respect to, and Customer's exclusive remedy against Publisher for, any Claim Against Customer.

- c. Notwithstanding anything contained in the above subsections (a) and (b), (1) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and (2) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if: (A) the third party asserting the claim is a government agency; (B) the settlement arguably involves the making of admissions by the indemnified parties; (C) the settlement does not include a full release of liability for the indemnified parties; or (D) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

#### **VIII. *Limitation of liability.***

For each Offering, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Offerings during the term of the applicable licenses, subject to the following:

- a. **Subscriptions.** For Offerings ordered on a subscription basis, Publisher's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Offering during the 12 months before the incident.
- b. **Free Offerings and distributable code.** For Offerings provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Publisher, Publisher's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's: (1) confidentiality obligations (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

#### **IX. *Pricing and payment.***

Customer's pricing and payment terms for a given order are set forth and governed by the Microsoft Services Agreement and applicable Order.

#### **X. *Term and termination.***

- a. **Term.** This Agreement is effective until terminated by a party, as described below. The term for each Order will be set forth therein.
- b. **Termination without cause.** Unless otherwise set forth in an Order, either party may terminate this Agreement or any Order without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses, and licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement. Publisher will not provide refunds or credits for any partial subscription period(s) if the Agreement or an Order is terminated without cause.
- c. **Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement or any Order immediately on notice if (i) the other party materially breaches the Agreement or an Order, and fails to cure the breach within 30 days after receipt of notice of the

breach; or (ii) the other party becomes Insolvent. Upon such termination, the following will apply:

- (1) All licenses granted under this Agreement will terminate immediately except for fully-paid, perpetual licenses.
- (2) All amounts due under any unpaid invoices will become due and payable immediately. For metered Offerings billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.
- (3) If Publisher is in breach, Customer will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

**d. Suspension.** Publisher may suspend use of the Offering without terminating this Agreement during any period of material breach. Publisher will give Customer reasonable notice before suspending the Offering. Suspension will only be to the extent reasonably necessary.

**e. Survival.** The terms of this Agreement, including the applicable Order, that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement or any Order, will survive termination or expiration, including all indemnity obligations and procedures.

#### **XI. Miscellaneous.**

**a. Entire Agreement.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. If there is a conflict between any parts of this Agreement, the following order of precedence will apply:

- (1) Order;
- (2) this Agreement;
- (3) Service Level Agreement (SLA); and
- (4) Documentation.

**b. Independent contractors.** The parties are independent contractors. Customer and Publisher each may develop products independently without using the other's Confidential Information.

**c. Agreement not exclusive.** Customer is free to enter into agreements to license, use, and promote the services of others.

**d. Amendments.** Unless otherwise agreed in a writing signed by both parties, Publisher will not change the terms of this Agreement, including privacy terms, during the term of this Agreement.

**e. Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Publisher may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Furthermore, either party may assign this Agreement without the consent of the other party in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.

**f. Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement

will remain in full force and effect.

- g. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- h. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.
- i. **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Publisher must be sent to the address stated in the Order. Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. Publisher may send notices and other information to Customer by email or other electronic form.
- j. **Applicable law.**
  - (1) **United States and Canada.** If you acquired the Offering in the United States or Canada, the laws of the state or province where you live (or, if a business, where your principal place of business is located) govern the interpretation of these terms, claims for breach of them, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.
  - (2) **Outside the United States and Canada.** If you acquired the Offering in any other country, the laws of that country apply.
- k. **Order of precedence.** The body of this Agreement will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- l. **Government procurement rules.** By accepting this Agreement, Customer represents and warrants that: (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.
- m. **Compliance with laws.** Publisher will comply with all laws and regulations applicable to its provision of the Offerings. Publisher will obtain and maintain any approvals, licenses, filings, or registrations necessary to its performance, and will comply with all law (including law related to export, corruption, money laundering, or any combination of these). Customer must also comply with laws applicable to their use of the Offerings.
- n. **Construction.** Neither party has entered this Agreement in reliance on anything not contained or incorporated in it. This Agreement is in English only. Any translation of this Agreement into another language is for reference only and without legal effect. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to effect the parties' intent. Lists of examples following "including", "e.g.", "for example", or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Unless stated or context requires otherwise:
  - (1) all internal references are to this Agreement and its parties;
  - (2) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars;



- (3) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs;
- (4) a party's choices under this Agreement are in its sole discretion, subject to any implied duty of good faith;
- (5) "written" or "in writing" means a paper document only, except where email is expressly authorized;
- (6) "days" means calendar days;
- (7) "may" means that the applicable party has a right, but not a concomitant duty,
- (8) "partner," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership;
- (9) "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured;
- (10) "notify" means to give notice under subsection (i) above; and
- (11) a writing is "signed" when it has been hand-signed (i.e., with a pen) or signed via an electronic signature service by a duly authorized representative of the signing party.

## **XII. Definitions.**

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party.

"Anti-Corruption Laws" means all laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, and illegal software, including the U.S. Foreign Corrupt Practices Act.

"Control" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Publisher or its Affiliates by, or on behalf of, Customer and its Affiliates through use of the Offering. Customer Data does not include Support Data. "Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Publisher by or on behalf of Customer (or that Customer authorizes Publisher to obtain from an Offering) through an engagement with Publisher to obtain technical support for the Offering covered under this Agreement.

"Data Protection Law" means any law applicable to Publisher or Customer, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("GDPR"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

"Documentation" means all user manuals, handbooks, training material, requirements, and other written or electronic materials Publisher makes available for, or that result from use of, the Offering.

"End User" means any person Customer permits to use an Offering or access Customer Data.

"Feedback" means ideas, suggestions, comments, input, or know-how, in any form, that one party provides to the other in relation to recipient's Confidential Information, products, or services. Feedback does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g.,

feature lists) for future products.

"Insolvent" means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting the appointment of a trustee or receiver for all or any of its (i.e., the non-terminating party's) assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business.

"Offering" means all services, websites (including hosting), solutions, platforms, and products identified in an Order and that Publisher makes available under or in relation to this Agreement, including the software, equipment, technology, and services necessary for Publisher to provide the foregoing. Offering availability may vary by region.

"Order" means an ordering document used to transact the Offering via the Marketplace.

"Personal Data" means any information relating to an identified or identifiable natural person.

"Representatives" means a party's employees, Affiliates, contractors, advisors and consultants.

"Standard Contractual Clauses" means the standard data protection clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR.

"Subcontractor" means any third party: (1) to whom Publisher delegates its obligations under this Agreement, including a Publisher Affiliate not contracting directly with Customer through an Order; or (2) who, in performing under a contract between it and Publisher or a Publisher Affiliate, stores, collects, transfers or otherwise processes Personal Data (obtained or accessed in connection with performing under this Agreement) or other Customer Confidential Information.

"use" means to copy, download, install, run, access, display, use or otherwise interact with.

**AZURE MARKETPLACE AND APPSOURCE MARKETPLACE**  
**OFFERINGS MADE BY CONSUMPTION INFORMATION REAL TIME PTY LTD**  
**ADDENDUM TO MARKETPLACE TERMS**

**1. Structure and Interpretation**

- (i) The terms and conditions set out in this Addendum and its attached Annexes (together referred to here as the "**Addendum**") are intended to be read in conjunction with the Microsoft Standard Contract applicable to purchases made through the Azure Marketplace and AppSource Marketplace (the "**Marketplace Terms**") and as such form part of the Agreement created between the Publisher and the Customer.
- (ii) Unless otherwise stated in this Addendum, words defined either in Section XII of the Marketplace Terms or elsewhere within those terms shall have the same meaning when used in this Addendum.
- (iii) Where there is any conflict between the Marketplace Terms and any provision contained within this Addendum, that conflict shall be resolved in accordance with the order of priority arrangements detailed in Sections XI(a) and XI(k) of the Marketplace Terms, save that the order of priority set out in Section shall XI(a) shall be expanded to read as follows:
  - a. Order;
  - b. this Addendum, together with its Annexes;
  - c. the remainder of the Agreement;
  - d. Service Level Agreement (SLA); and
  - e. any relevant Documentation.

**2. Relevant Offerings**

- (ii) The following services and products constitute the Offerings available under the terms of this Agreement:
  - a. Fridgeloc;
  - b. Q-Hop;
  - c. Temploc; and
  - d. Vaccloc.
- (iii) Any terms and conditions specific to each Offering and any associated commercial detail is set out in the Annexes to this Addendum and in any associated Order.
- (iv) Orders for any of the above Offerings may only be placed using the Marketplace.

**3. Licence**

- (i) Without prejudice to Section I(a) of the Marketplace Terms, the Publisher hereby grants the Customer the non-exclusive, non-transferable right for the duration of any relevant Order, to use any software, equipment, app, user guide, documentation or other material (including any copyright or other intellectual property rights therein), supplied by the Publisher to the Customer in order to enable the Customer or any End User to use and benefit from any relevant Offering (the "**Publisher IP**"), in accordance with the terms of this Agreement and the Order concerned.

- (ii) Subject to the licence granted under paragraph 3(i) above, the Customer acknowledges and agrees that it will obtain no ownership or other rights in the Publisher IP.

#### **4. Additional warranty exclusion**

- (i) Where and to the extent that the Offering includes any or all of the supply, installation, and maintenance of hardware or other equipment, the Customer acknowledges and agrees to the following, in addition to the disclaimer and warranty exclusions set out in Section VI of the Marketplace Terms:
  - a. THE EQUIPMENT IS SUPPLIED SUBJECT ONLY TO THE MANUFACTURER'S WARRANTY APPLICABLE TO THAT ITEM OF EQUIPMENT.
  - b. THE PUBLISHER MAKES NO WARRANTY OR REPRESENTATION, WHETHER EXPRESS OR IMPLIED, IN RELATION TO THE MANUFACTURE OR ONGOING OPERATION OF THE EQUIPMENT, THE PUBLISHER'S SOLE RESPONSIBILITY IN RELATION TO THE EQUIPMENT BEING THE PROVISION OF ANY RELEVANT INSTALLATION, SUPPORT AND MAINTENANCE SERVICE THAT IS EXPRESSLY DESCRIBED AS BEING PART OF THE RELEVANT OFFERING.

#### **5. Confidentiality**

For the purposes of Section III(c) of the Marketplace Terms, disclosure required by law, shall include disclosures required by a registered stock exchange or tax authority.

#### **6. Limitations of Liability**

- (i) For the purposes of Section VIII of the Marketplace Terms, each Offering made available under the terms of this Agreement shall be classed as a "Subscription", meaning that the limits of liability applicable to any breach of this Agreement; any use made of the Offering or any associated equipment; and any representation, statement or tortious/ delictual act or omission (including negligence) arising under or in connection with this Agreement, shall be as stated in Section VIII(a).
- (ii) The Publisher shall not be liable in contract, tort/ delict, negligence, or otherwise, for any loss or damage whatsoever arising from or in any way connected with the Customer's interaction and/or transaction with any third party website using any Offering or any associated app. The Publisher shall also not be responsible for the content of any linked sites.
- (iii) An additional exception for the purposes of Section VIII(d) shall be either party's liability in respect of fraud, deliberate default or reckless misconduct.

#### **7. Termination Charge**

- (i) Where the terms applicable to the use of a given Offering (as set out in an Annex to this Addendum or in any relevant Order) state that use of the Offering is subject to a minimum term commitment, the Customer agrees that termination of any relevant Order prior to expiry of the applicable minimum term will, in certain circumstances, make the Customer liable to pay an early termination charge to the Publisher (a "**Termination Charge**").
- (ii) A Termination Charge will be payable where this Agreement or any relevant Order is terminated in the following circumstances:
  - a. by the Publisher in response to a breach of this Agreement or the relevant Order, by the Customer; or

- b. by the Customer, voluntarily.
- (iii) A Termination Charge will not be payable where this Agreement or a relevant Order is terminated by the Customer following a breach of contract by the Publisher.
- (iv) Where a Termination Charge is payable, it shall be set at an amount equal to the proportion of the charges that would have been payable by the Customer to the Publisher during the period between the date of termination and expiry of the minimum term (as stated in the Order concerned).

## **8. Force Majeure**

Neither the Publisher nor the Customer shall be liable to the other for any delay in or failure to perform obligations they have undertaken under the terms of this Agreement where and to the extent that the delay or failure is the direct result of an event beyond that party's control which could not reasonably have been avoided or overcome and the event did not arise, directly or indirectly, as a result of a breach of this Agreement by the party affected by the force majeure event.

## **9. Customer Indemnity**

The Customer will indemnify the Publisher and hold the Publisher harmless against any losses that the Publisher may suffer as a result of any claim made or threatened against the Publisher as a result of the Customer's or any End User's use of any relevant Offering in connection with criminal or other illegal activities.

## **10. Language and Notices**

- (i) This Agreement has been drafted in the English language. In the event of any discrepancy between the meanings of any translated versions of this Agreement and the English language version, the meaning of the English language version shall prevail. The parties agree that all communications in relation to this Agreement or any Order, shall be in English.
- (ii) When the Customer or any End User sends an e-mail to the Publisher, that communication will be made electronically. By accepting the terms of this Agreement, the Customer consents to receive notices electronically, including (without limitation), communications, amendments to this Agreement and any applicable policies, disclosures, notices, payment information, statements, responses to claims and other communications that may be required by law (each a "**Communication**"). Without prejudice to Section XI(i) of the Marketplace Terms, Communications may be sent by e-mail to the e-mail address nominated by the Customer at the time that it registers to use any relevant Offering. All electronic Communications will be deemed to be made "in writing". The Customer is responsible for printing, storing and maintaining its own records of each Communication.
- (iii) Legal notices and documents required to be physically delivered shall be delivered to the address stated in accordance with the provisions of Section XI(i) of the Marketplace Terms.

## **11. General**

- (i) If any part of this Agreement shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed to be severable from the rest of this Agreement and shall not affect the validity and enforceability of any of the remaining provisions of this Agreement. In such cases, the part deemed invalid or unenforceable shall be construed in a manner consistent with applicable law to reflect, as closely as possible, the original intent of the parties.
- (ii) In this Agreement and unless otherwise stated, the terms "Publisher", "we", "us" or "our" refer collectively to the Publisher and its subsidiaries, affiliates, directors, officers, employees, agents and contractors.

## **12. Disputes and Governing Law**

- (i) Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the International Arbitration Centre's Rules, which Rules are deemed to be incorporated by reference into this paragraph, on the basis that the:
  - a. number of arbitrators shall be one;
  - b. seat, or legal place, of arbitration shall be South Africa;
  - c. language to be used in the arbitral proceedings shall be English; and
  - d. governing law of the arbitration agreement shall be the substantive law of South Africa.
- (ii) For the purposes of Section XI(j) of the Marketplace Terms and subject to paragraph 12(i) above, this Agreement and disputes arising out of or in connection with it shall be governed by the laws of South Africa both procedurally and substantively and notwithstanding any conflict of law rules which may apply. Subject to paragraph 12(i) above, the parties irrevocably agree that the courts of South Africa shall have non-exclusive jurisdiction to settle disputes or claims that arise out of or in connection with this Agreement or its subject matter (including non-contractual disputes or claims).

**ANNEX 1**  
**FRIDGELOC**

**1. Fridgeloc IoT Device**

- (i) As part of this Offering, the Publisher shall supply the Customer with an agreed number of devices (each an "**IoT Device**"), which once installed will allow the Customer to use the functionality available as part of the Offering.
- (ii) Ownership of the IoT Device will at all times vest in the Publisher, with the Customer using that equipment under a licence granted by the Publisher for the duration of any relevant Order.
- (iii) The total number of IoT Devices to be supplied in relation to any given Order, together with their delivery location, will be stated in that Order. The Customer will be responsible for distributing IoT Devices to its relevant business premises.
- (iv) The Customer will be responsible for the installation of IoT Devices at its business premises, in accordance with installation instructions that will be supplied by the Publisher.
- (v) The date upon which the first IoT Device associated with any given Order goes live, as part of its commissioning and testing process, will be the service commencement date for the Order concerned and will mark the start of the Customer's 60 month service term.

**2. Charges**

- (i) Unless otherwise stated in the relevant Order, the charges payable in relation to this Offering will grant access to the PowerBi dashboards by up to 50 nominated email accounts. Any increase in the number of nominated email accounts above that maximum will incur additional charges.
- (ii) If the Customer wishes to change the pricing tier that is stated in any given Order it may do so by moving to a higher pricing tier. Customers are not permitted to move to a lower pricing tier during the term of an Order.

**3. Termination Charge**

- (i) A Termination Charge calculated in accordance with paragraph 7(iv) of the Addendum will be payable in relation to this Offering, together with an administration charge representing an amount equal to 10% of all charges which at the relevant time are outstanding in relation to the Order(s) that are being terminated.

## ANNEX 2

### Q-HOP

#### 1. Customer Account

- (i) Any Customer representative who installs and creates an account with the RIS Q-Hop app (the “**App**”) or a white labelled instance thereof does so under the terms of this Agreement as an End User.
- (ii) Any such End User will be required to accept the terms of this Agreement when entering the “My Account” section of the App and provide personal details for use in the My Account feature within the App (“**Account Information**”).

#### 2. Application and Variation of this Agreement

- (i) Completing the My Account section allows the End User to use the features detailed in paragraph 3 below. If the End User declines to accept the terms of this Agreement, those aspects of the App will not be available.
- (ii) By using the App each End User agrees, on his or her own behalf and on behalf of the Customer that the terms and conditions detailed in the Agreement are understood and agreed.
- (iii) The Publisher reserves the right to amend, modify, update and change any of the terms of this Annex. Any material changes to this Annex will be notified to the Customer and to End Users through the messaging features of the App. The Customer's continued use of the Offering and the End User's continued use of the App (as appropriate) will be deemed to constitute the Customer's and/or relevant End User's acceptance of such changes from the date of notification of the change concerned.

#### 3. Features of the App

- (i) The advance features of the App allow the Customer to:
  - a. conduct targeted marketing based on previous shopping experiences; and
  - b. identify stores in the relevant area that have a Q-Hop kiosk.

#### 4. The My Account Feature in the App

- (i) Account Information will be sent to the Publisher's RIS server. The Publisher will not store any passwords or payment information.
- (ii) The Publisher uses AuthGate to manage the payment process. The Publisher will not send Account Information from the Publisher's RIS server to the AuthGate server or to the applicable third party payment services provider.
- (iii) Section II of the Marketplace Terms confirms the data privacy arrangements that apply to the collection and use of Account Information, with those arrangements being further clarified by the terms of the Publisher's Privacy Policy, which is accessible through the App.



- (iv) Unless the Customer or relevant End Users have opted out of any such arrangements using the procedures provided for in the Publisher's Privacy Policy, the Publisher shall have the right to use the Account Information to contact the Customer and its End Users in order to market any other products or services offered by the Publisher, its affiliated companies or any of its participating merchants.

## **5. The Publisher's Role**

- (i) The Customer acknowledges and agrees that the Publisher shall not be responsible for the outcome of the Customer's transactions with external merchants conducted via the App. The Publisher does not control and shall not be liable for the legality of, or the use of, the goods and services that are paid for using the App.
- (ii) It is the Customer's responsibility and the responsibility of the relevant merchant, not the Publisher, to resolve any dispute or claim relating to any payments made via the App or the purchase or sale of goods or services.
- (iii) The Customer may initiate a refund through the payment processor's defined channels if:
  - a. a payment made via the App is reversed by a court, regulatory authority or other third party acting in accordance with applicable law;
  - b. the payment processor, in its sole and absolute discretion, accepts or has reason to believe that a payment was not authorized by the Customer; or
  - c. a payment is allegedly unlawful, suspicious, or in breach of this Agreement.
- (iv) Where an End User has a dispute with a customer, the Publisher will provide information that it holds which may assist resolution of the dispute concerned and otherwise attempt to assist the Customer as far as the Publisher considers practicable. Provision of any such support may be subject to the Customer's payment of an administration fee covering the Publisher's reasonable costs of providing any such assistance.

## **6. Security and unauthorised payments**

- (i) The App utilizes the AuthGate payment abstraction to process payment using any mobile payment method supported by the Customer. The App security and authorization is handled by the relevant third party payment application.
- (ii) The Publisher will be entitled to assume that the Customer is providing payment instructions and making payments and the Customer will therefore be liable for any such payments. Any dispute needs to be resolved between the Customer and the relevant payment provider.
- (iii) The Publisher may refuse to act on any payment instruction, including in circumstances where the Publisher has reason to believe that the instruction concerned:
  - a. was unclear;
  - b. was not given by the Customer or any End User; or
  - c. might cause the Publisher to breach a legal or other duty.
- (iv) The Publisher may similarly refuse to act on any payment instruction, where it has reason to believe that the App is being used for an illegal purpose or the payment may harm the Publisher's reputation.

- (v) The Customer agrees to fully cooperate with the Publisher and the Publisher's agents and any relevant regulatory authority or the police where the Publisher reasonably suspects unauthorised payments may have been or are being made using the App.

## **7. App usage charges**

- (i) The Publisher will not charge the Customer or its End Users for use of the App.
- (ii) Relevant mobile network operators may charge for use of the App and those charges must be met by the Customer or relevant End User concerned.

## **8. Termination/Suspension of access to the App**

- (i) The Publisher may suspend or terminate the Customer's or any End User's access to the App or to the features within the App without notice where it is reasonable for the Publisher to do so and specifically if:
  - a. for any reason, the Publisher decides to generally discontinue its provision of the App;
  - b. the Publisher believes that the Customer or the End User concerned has breached any of the terms of this Agreement;
  - c. the Customer's or relevant End User's use of the App has been in any way improper or breaches the spirit of this Agreement;
  - d. the Publisher reasonably believes that use of the App may create a risk of fraud or misuse;
  - e. the Publisher suffers an IT system or infrastructure failure or if system or infrastructure maintenance needs to be carried out; or
  - f. ordered or recommended to do so by the security services, court or a relevant regulatory authority.

## **9. Use of the App**

- (i) The Customer must not and must procure that End Users do not:
  - a. copy or reproduce all or any part of the App;
  - b. alter, modify or adapt all or any part of the App;
  - c. remove or tamper with any copyright notice attached to or contained within the App; or
  - d. carry out reverse engineering of the App.
- (ii) The Customer represents and warrants to the Publisher that:
  - a. all Account Information provided to the Publisher is true and accurate in every respect and that all such information will be kept up to date during the term of this Agreement;
  - b. it will only use the App for its own purposes and will not use the App on behalf of any other person or entity;
  - c. all payments initiated by the Customer or any End User will comply with all applicable laws, rules, and regulations; and

- d. the App will not be used, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the functionality of the App.

## 10. System complaints and resolution of disputes

- (i) If the Customer or any End User experiences any issues with the App, brief details of those issues should be emailed to the Publisher at [support@q-hop.com](mailto:support@q-hop.com). The Publisher's customer service staff will acknowledge any such email within one business day of receipt and will investigate any issues and provide an initial response (including, where appropriate, an offer of redress).
- (ii) Where appropriate, the member of staff investigating the complaint will not have been directly involved in the subject matter of the complaint.
- (iii) Investigation of any issues should take no longer than five business days, with most issues typically being resolved by close of business on the business day after the issue is raised. If an issue is not resolved by close of business on the business day after the issue is raised, the Publisher's representative will send the Customer or End User concerned, a copy of its complaints handling procedure.
- (iv) If the Customer or any End User is not satisfied with the Publisher's response, the issue should be escalated to the Publisher's Customer Services Manager, who will respond by email within a further five business days.
- (v) If the response received from the Customer Services Manager is similarly seen as being unsatisfactory, the Customer or End User concerned should email [support@q-hop.com](mailto:support@q-hop.com), enclosing copies of the responses already received. That email will then be referred to the Publisher's Managing Director, who will respond by email within a final five business days.
- (vi) Within four weeks after receiving the notice of any issues, the Publisher will send the Customer or the relevant End User a final response or a response which explains why the Publisher is not in a position to resolve the issue, confirming when the Publisher will make further contact.

## ANNEX 3

### TEMPLOC

***[Insert here any legal or commercial terms that (i) are specific to this Offering; (ii) are not already covered in the Marketplace Terms or Addendum; and (iii) will not covered in the Order (eg: specification of Offering; required equipment (including terms applicable to the supply, installation, testing and support of the equipment); pricing and SLA.]***

## ANNEX 4

### VACCLOC

***[Insert here any legal or commercial terms that (i) are specific to this Offering; (ii) are not already covered in the Marketplace Terms or Addendum; and (iii) will not covered in the Order (eg: specification of Offering; required equipment (including terms applicable to the supply, installation, testing and support of the equipment); pricing and SLA.]***