

THIS RESELLER AGREEMENT is made on the [](**Effective Date**),

BETWEEN:

Cloud2Me Limited, a company registered in England and Wales, under company number 08423105, whose registered office is at Old Post, 19 High Street, Nutfield, Surrey, Reading, RH1 4HH, England;

and

[EXAMPLE], a company registered in [EXAMPLE], under company number [EXAMPLE], whose registered office is at [EXAMPLE].

RECITALS

- A. Whereas C2M offers Hosting Services and Consultancy Services which include Microsoft product licensing services, data centre colocation, hosted desktops, hosted exchange, web hosting, dedicated hardware servers, email archiving, IaaS (infrastructure as a service), PaaS (platform as a service) and virtual private servers, dedicated hardware servers and email archiving.
- B. Whereas the Partner wishes to have the right to promote and resell white labelled Hosting Services and Consultancy Services in its own name to Customers in the Territory.
- C. Whereas C2M agrees to grant the Partner the non-exclusive right to promote, sell and implement Hosting Services and Consultancy Services as the Partner's own product to Customers in the Territory in accordance with the terms of this Reseller Agreement.

NOW IT IS AGREED AS FOLLOWS

1. Definitions

- "Agreement"** means this Reseller Agreement together with the Price List, Professional Service Agreement (including the End User Terms), Online Conduct Policy, SLA, DPA, Privacy Policy and the Microsoft Licence Terms;
- "Business Hours"** means Monday to Friday 08:30 – 1800 UK local time (excluding UK Public Holidays);
- "C2M"** means Cloud2Me Limited, company number 08423105, with its registered office at Old Post, 19 High Street, Nutfield, Surrey, Reading, RH1 4HH, England;
- "Confidential Information"** means all information passing from one party to the other party relating to the business of the disclosing party (whether disclosed before or after the date of this Agreement), including but not limited to trade secrets, drawings, know-how, research, techniques, source and object code, financial, business and marketing plans, business opportunities and projections, arrangements and agreements with third parties, Customer information, Customer Data and Customer information proprietary to Customers, formulae, suppliers, concepts not reduced to material form, designs, plans and models;

“Consequential Loss”	means pure economic loss, special, indirect or consequential loss, losses incurred by any user, Customer or other third party, losses arising from business interruption, loss of business revenue, goodwill, anticipated savings, losses whether or not occurring in the normal course of business, waste management or staff time, loss or corruption of data;
“Consultancy Services”	means the IT consultancy services described in the Price List;
“Customer”	means customers based in the Territory who purchase Services from the Partner pursuant to this Reseller Agreement;
“Customer Data”	means all materials, data or other content created or supplied by Customers or their users to the Partner or stored at the Data Centre on behalf of the Customer and forms part of the Confidential Information of the Partner;
“Data Centre”	means the premises from which C2M is to provide the Hosting Services, which shall be within C2M’s cloud IT infrastructure;
“DPA”	means the data processing agreement available at https://www.cloud2me.co.uk/ts&cs/c2m-reseller-dpa.pdf as amended from time to time;
“Effective Date”	means the date on which this Reseller Agreement will commence as set out at the beginning of this Reseller Agreement;
“End User Terms”	means the Microsoft end user licence terms set out in Appendix 1 of the Professional Services Agreement;
“Expenses”	means out of pocket expenses incurred by C2M in acquiring anything necessary for it to provide the Services to the Partner, which includes but is not limited to reasonable travel and hotel accommodation expenditure incurred by C2M’s personnel in providing the Services; and any other expense authorised in advance by a Named Person;
“Fees”	means the fees payable to C2M by the Partner for Sales of Services as set out in the Price List;
“Force Majeure”	means anything outside the reasonable control of a party including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, terrorism, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, transportation embargo, failure or delay in transportation, including without limitation where C2M ceases to be entitled to access the Internet or ceases to have access to the Internet for whatever reason, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency;
“Hosting Services”	means the hosting services described in more detail in the SLA;
“IPR”	means all intellectual property rights relating to or owned by either party anywhere in the world (including present and future intellectual property

rights, whether registered or unregistered) including without limitation Confidential Information, business names or logos, domain names, copyright, database rights, patents, trademarks or service marks, designs, software, computer data, generic rights, software programmes and source code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration, renewal, extension or protection of those rights;

- “Microsoft Licence Terms”** means the Microsoft licence terms available at <https://www.cloud2me.co.uk/ts&cs/c2m-reseller-msterms.pdf> as amended from time to time;
- “Named Persons”** means the following person(s): [EXAMPLE] who are also Partner Administrators;
- “Online Conduct Policy”** means C2M’s policy for online conduct setting out the terms and conditions on which the Partner and Customer agree to utilise C2M’s network, systems, products and services available at <https://www.cloud2me.co.uk/ts&cs/c2m-reseller-ocp.pdf> as amended from time to time;
- “Partner”** means [EXAMPLE partner];
- “Price List”** means the price list for the Services set out in Schedule 1 of this Agreement, as amended by C2M from time to time
- “Privacy Policy”** means the privacy policy of C2M available at <https://www.cloud2me.co.uk/ts&cs/c2m-reseller-pps.pdf> as amended from time to time;
- “Professional Services Agreement”** means the Professional Services Agreement of C2M (including Annex 1 – End User Terms) available at <https://www.cloud2me.co.uk/ts&cs/c2m-reseller-psa.pdf> as amended from time to time;
- “Renewal Term”** means each period of 1 month starting from the Effective Date;
- “Reseller Agreement”** means this reseller agreement;
- “Sales”** means the conclusion of an agreement during the Term between the Partner and a Customer, entered into by the Partner in its own name, for the purchase of Services from the Partner;
- “Services”** means the Hosting Services and the Consultancy Services, including any software licences owned and developed by C2M and its subsidiaries or licenced for resale by Microsoft, set out in the Price List and any other products or functions developed or added to the services, products or technologies from time to time;
- “SLA”** means the service level agreement of C2M available at <https://www.cloud2me.co.uk/ts&cs/c2m-reseller-sla.pdf> as amended from

time to time;

“Term” means the period starting from the Effective Date and continuing for successive automatic Renewal Term, until either party exercises its rights under this Agreement to terminate;

“Territory” means worldwide.

2. Appointment and Term

- 2.1 The Partner shall act independently from C2M in the Territory for the Term. The Partner shall be granted the non-exclusive, non-transferable right to sell, promote and implement Services and provide support services to Customers in its own name in the Territory subject to the terms of the Agreement, (as amended by C2M from time to time).
- 2.2 C2M shall maintain the right to appoint other Partners to sell, promote, implement and support Services in the Territory and also retains the right to sell, promote, implement and support Services itself in the Territory.

3. Object of Agreement

- 3.1 The Partner shall negotiate, conclude and perform agreements with Customers for the purchase of Services in the Territory in its own name and on its own account. The Partner shall have full responsibility for concluding Sales and for providing support and maintenance services to Customers.
- 3.2 Nothing in the Agreement shall prevent the Partner from selling Services together with or in conjunction with the Partner's own products and services, including but not limited to the right of the Partner to sell Services as part of a larger re-engineering project or as a part of an entire company website, provided however, that
 - 3.2.1 There is no transfer whatsoever of either title or IPR or other similar rights of any sort attached to the Services; and
 - 3.2.2 C2M shall remain the exclusive and sole owner (or valid licensee) of all such rights;
- 3.3 The Partner shall indemnify C2M in full for any infringement of clause 3.2 above.

4. Relationship between C2M, the Partner and Customers

- 4.1 The Partner shall sell Services to Customers in the Partner's name, using the Partner's local terms, conditions and prices. C2M shall not be a party to the agreement between the Partner and a Customer.
- 4.2 The Partner shall invoice all Customers directly in accordance with the contractual payment dates of the Customer for Sales and all payments from Customers shall be made directly to the Partner.
- 4.3 It is a condition of the Agreement that the Partner will ensure that Customers agree to be legally bound by the terms of:
 - 4.3.1 The Professional Services Agreement and the Online Conduct Policy as amended by C2M from time to time, when purchasing Services from the Partner; and in addition;

4.3.2 The Microsoft Licence Terms and the End User Terms, when Customers purchase Services which include Microsoft products from the Partner;

And the Partner shall indemnify C2M in full for any infringement by a Customer of the Professional Services Agreement, the End User Terms, the Online Conduct Policy and the Microsoft Licence Terms, as applicable.

5. Obligations of the Partner

The Partner shall:

- 5.1 Conclude Sales in its own name with the Customer using its own local terms and conditions and price lists.
- 5.2 Act in the interests of C2M and with the due diligence of an ordinary businessman or trader.
- 5.3 Use its best endeavours to proactively advertise, market and procure Sales to potential Customers, which shall include but not be limited to conducting demonstrations to potential Customers and preparing proposals and quotations for the Services. All marketing activities shall comply with the sales and marketing guidelines of C2M, as they are varied from time to time and the Partner will not use C2M brand in any marketing activity without first obtaining the prior written approval of C2M.
- 5.4 Look after the business relationship with Customers which shall include, providing support and maintenance of the Services as set out in clause 11.
- 5.5 Not make any false or misleading representations with regard to C2M or the Services.
- 5.6 Not make any promises or representations or give any warranties or guarantees in respect of the Services except those included in the literature created by C2M and distributed to the Partner with the Services.
- 5.7 Not manufacture or distribute goods which compete directly or indirectly with the Services without the express written consent of C2M.
- 5.8 Comply with any instructions and/or guidelines provided by C2M.
- 5.9 Where the Services include Microsoft products the Partner shall comply with the additional provisions of the Microsoft License Terms and the End User Terms in relation to the Microsoft products.
- 5.10 Keep Customer Data up to date and record such details carefully.
- 5.11 Permit C2M to inspect copies of all relevant accounting documents, relating to Sales, which are needed by C2M to check its entitlement to Fees.
- 5.12 Pay C2M all Fees that C2M is entitled to under the Agreement.
- 5.13 Promptly inform C2M if any dispute arises between the Partner and a Customer in respect of the Services and comply with all reasonable instructions of C2M in relation thereto.
- 5.14 Ensure that only the Named Persons shall act for the Partner under the terms and conditions of the Agreement. However, further Named Persons may be added to this list at any time, with the written approval of C2M.

- 5.15 Inform C2M if any Named Person leaves the employment of the Partner or is restricted in acting for the Partner in any way. C2M reserves the right to terminate the Agreement with cause if a Named Person leaves the employment of the Partner without being replaced, within 4 weeks, by an equivalent and suitable successor with comparable qualifications and professional experience. The Partner must notify C2M of the name of any such replacement within 4 weeks of a Named Person being replaced, confirming the replacement's qualifications and professional experience.
- 5.16 Have at least one person representing the Partner at all times during the Term and is responsible for finding able substitutes in the event of the illness or vacation of a Named Person.
- 5.17 Train and maintain its staff at its own expense to be conversant with the technical language and functionalities of the Services and develop sufficient knowledge of the industry, the Services and of products competitive with the Services so as to be able to explain the benefits and functions of the Services to Customers.
- 5.18 Take part in training programmes offered by C2M from time to time, at the Partner's own cost. The sales training itself shall be provided by C2M free of charge.
- 5.19 Cover all of its own expenses incurred pursuant to the Agreement.
- 5.20 Comply with all applicable international, national, state/provincial, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Services.
- 5.21 Not represent itself as an agent of C2M for any purpose, nor pledge C2M's credit or give any condition or warranty or make any representation on C2M's behalf or enter into any agreements for or on behalf of C2M.

6. Obligations of C2M

C2M shall:

- 6.1 Grant the Partner the non-exclusive, non-transferable right to conclude Sales of Services to Customers in the Territory for the Term in accordance with the terms and conditions of the Agreement.
- 6.2 Host the Services on the Partner's behalf pursuant to the SLA.
- 6.3 Provide second/third level support and maintenance to the Partner on behalf of Customers as set out in clause 11. C2M shall only provide support directly to Customers if the parties enter into a separate written support and maintenance agreement and the Partner pays C2M additional fees for such additional professional services.
- 6.4 Provide all support and assistance reasonably required by the Partner to fulfil its obligations under the Agreement to the best of its abilities. Such support and assistance shall include marketing and technical assistance in the promotion, sale and delivery of Services and informing the Partner when C2M distributes sales or marketing instructions or guidelines to its partners.
- 6.5 Promptly inform the Partner,
 - 6.5.1 If C2M or any of C2M's other partners have submitted a quote for a potential Customer which it believes is already in dialogue with the Partner; and
 - 6.5.2 Of the reasons for any Customers being rejected or why a Partner may not carry out its activities under the Agreement in relation to a particular Customer.

6.6 Forward all documents and materials that the Partner reasonably requires to carry out its duties to C2M free of charge. No title or ownership in these documents and materials will pass to the Partner and they will continue to be owned (or be validly licensed by) C2M.

7. Ordering Fees and Invoicing

7.1 The Partner shall place orders for Services from time to time during the Term by completing a request for Services via the Cloud2Me support desk.

7.2 The Fees set out in the current Price List shall apply until C2M notifies the Customer of any changes to its pricing. Where prices are changed the Customer shall be sent a new price list which shall replace the previous price list and apply to all Sales and renewals from the effective date of the replacement price list.

7.3 On the closest Business Day to the 25th of each calendar month of the Term, C2M shall take a snapshot of all Services used by the Partner and send a summary of these by email to the Named Person(s), ("**Reseller Summary**").

7.4 On the 1st of the following month C2M shall send the Partner an invoice setting out the Fees payable for the Services set out in the Reseller Summary for the previous month. The Fees shall be based upon the prices set out in the Price List (which C2M may change from time to time upon giving the Partner at least 30 days prior notice) and are always chargeable for entire calendar months, even if use is only for part of a month.

8. Payment of Fees

8.1 All Fees shall be invoiced and paid in the currency set out in the Price List.

8.2 The Partner shall pay C2M all Fees within 14 days of receipt of C2M's invoices.

8.3 VAT or local sales tax will be added if, and as far as, C2M is obliged to pay VAT, local sales tax or withholding taxes according to local applicable tax laws.

8.4 Each party will pay all taxes, duties, levies imposed by all foreign, federal, state and local authorities (including without limitation, export, sales, use, excise and value added taxes) based on any amounts paid or payable by such party under this Agreement. However, no party will be responsible for taxes based on the net income of any other party.

8.5 C2M shall be entitled to charge interest on any payment overdue at the statutory rate prevailing at the time accruing on a daily basis and compounded quarterly and shall be entitled to such reasonable costs as it incurs in the collection of any overdue payments.

9. Expenses

9.1 In addition to the Fees payable under clause 8 above, the Partner shall reimburse all reasonable Expenses incurred by C2M personnel in the performance of the Services.

9.2 Reimbursement of Expenses of more than £150 is subject to the Expense in question being approved in advance in writing by the Partner.

9.3 C2M shall submit invoices for Expenses monthly relating to the immediately preceding calendar month. Invoices shall be supported by reasonable evidence of the underlying Expenses having been incurred. The Partner shall pay C2M the Expenses no later than 14 days following receipt of the applicable invoice.

10. Delivery

- 10.1 C2M reserves the right to refuse any orders placed by the Partner or to delay or suspend further delivery of any Services, if the Partner:
- 10.1.1. Fails to make any payment when due under the Agreement;
 - 10.1.2. Fails to meet the credit or financial requirements established by C2M, including any limitation on allowable credit;
 - 10.1.3. Materially breaches any of its obligations under the Agreement.
- 10.2 C2M reserves the right to discontinue the manufacture, license or sale of any or all Services at any time, and to refuse any orders for such discontinued Services without any liability whatsoever to the Partner or any other third party. C2M shall give the Partner at least thirty (30) days advance notice of any intention to discontinue Services. No such refusal or delay in delivery will be deemed a termination or breach of the Agreement.

11. Support and Maintenance

- 11.1 After the Effective Date, the Partner shall promptly establish and thereafter operate an efficient Customer support service in relation to users of the Services, including a telephone technical support service during Business Hours. In particular, but without limitation, the Partner shall ensure that at least one employee of the Partner undergoes a training course or workshop session with C2M.
- 11.2 The Partner shall promptly distribute all updates of Services to its Customers who are being provided with support. The Partner shall comply in all respects with C2M's reasonable directions on all aspects of support of the Services in the Territory.
- 11.3 C2M shall provide second/third level support to the Partner on behalf of Customers remotely as set out in the SLA. If remote support is no longer effective, C2M will at the request of the Partner, support the Partner at C2M's site, provided that C2M is paid for these additional services on a time and materials basis. Expenses shall be payable in addition.

12. Audit Rights

- 12.1 During the Term and for a period of two (2) years thereafter, the Partner agrees to keep all usual and proper records and books of account and all usual and proper entries relating to the number of distributed Services, all support contracts, plus all other information upon which payments to be made hereunder are based.
- 12.2 C2M may request an audit and/or inspection to be made of the applicable Partner records and facilities in order to verify the Fees and to verify the Partner's compliance with the terms of the Agreement, provided that such audit and/or inspection shall be conducted during normal business hours and in such a manner as not to interfere unreasonably with the operations of Partner.
- 12.3 The Partner shall pay C2M the full amount of any underpayment revealed by the audit plus interest from the date such payments were due under the terms of the Agreement at the then applicable list price. Notwithstanding the foregoing, if such audit reveals an underpayment by the Partner of more than five percent (5%) for the period covered by the audit report, the Partner shall pay the reasonable expenses incurred in conducting such audit and the amount underpaid with interest from the date such payment was due under the terms of the Agreement.

13. Termination

- 13.1 C2M has the right to terminate the Agreement with cause on giving the Partner 14 days written notice if:

- 13.1.1 The ownership or the shareholder structure of the Partner changes;
- 13.1.2 There is a material breach of the terms of the Agreement by the Partner, which shall include but not be limited to the Partner's failure to pay any sum due under the Agreement, failure to perform any of its obligations under the Agreement - in particular to provide support services, misrepresentation of the Services or C2M's brand or products, or the Partner breaches any applicable law in the Territory which affects C2M's business or reputation or if Customers or the Partner breach the Online Conduct Policy, PSA, End User Terms or the Partner breaches the Microsoft License Terms;
- 13.1.3 The Partner ceases, or threatens to cease to carry on business; or is unable to pay its debts; or passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of insolvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect; or has an administrator appointed or documents are filed with court in respect of such appointment or notice is served of an intention to appoint an administrator by that party or its directors or by a qualifying floating charge holder as provided in the Insolvency Act 1986; or has a receiver or manager or similar official appointed over the whole or substantial part of its undertaking or assets; or makes a voluntary arrangement with its creditors or becomes subject to an administration order; or is affected by a similar event under the law of any other jurisdiction; or
- 13.1.4 A Force Majeure event last more than 28 days; or
- 13.1.5 The Partner is in persistent breach of the Agreement and despite being requested to remedy the breach, the Partner fails to take appropriate action to remedy the breach within 30 days of the request.
- 13.2 Each party has the right to terminate the Agreement without cause, by giving the other party 30 days written notice prior to the start of any Renewal Term. Such notice shall be effective from the expiry of the current Renewal Term.
- 13.3 Following termination of the Agreement the Partner must:
 - 13.3.1 Return all copies of the Services, source code, documents, materials, Confidential Information of C2M and correspondence with the Customer, whether in electronic form or hardcopy as well as other objects that it has received within the context of the Agreement to C2M;
 - 13.3.2 Cease providing the Services to Customers and immediately deactivate all Customer accounts;
 - 13.3.3 Within 14 days after termination, confirm to C2M that it has fully complied with its duties under this clause 13.3.;
 - 13.3.4 Cease using any C2M trademark, domain name, logo or trade name in connection with the promotion or advertising of the Services and from its web portal or marketplace, and shall immediately eliminate from all its literature, business stationery, publications, notices and advertisements all representations of the Partner's appointment hereunder.
- 13.4 The parties can agree to transfer Customer agreements to C2M or to another reseller of C2M. C2M (or other reseller) shall then provide the Services to the Customer directly at its then current prices and on its then current terms and conditions in return for receiving payment of all fees directly from the Customer.
- 13.5 Termination of the Agreement for any reason whatsoever shall not prejudice either party's rights accrued prior to termination. Any clauses which by their nature should survive termination of the Agreement shall survive and shall remain in full force and effect.

14. Customer Data and Data Protection

- 14.1 C2M has no responsibility for the accuracy and/or functionality of the Customer Data or content in the form in which it is provided by the Customer or Partner or as modified upon and in accordance with the Partner's or Customer's instructions.
- 14.2 If C2M reasonably forms the view that the Customer Data may be pornographic, defamatory, misleading or deceptive or otherwise in breach of any third party's rights or in contravention of applicable law, or the Online Conduct Policy, C2M may without notice or any liability remove that Customer Data and shall within 24 hours thereafter notify the Partner of its removal.
- 14.3 The Partner shall defend, indemnify and hold C2M and its affiliates, employees, directors, officers, sub-contractors, agents and third party providers harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly in connection with:
- 14.3.1 Any Customer Data or content including but not limited to the posting, processing, transmission of Customer Data or content on a website or stored at the Data Centre;
 - 14.3.2 Any breach of the terms of the Professional Services Agreement, Online Conduct Policy, End User Terms or Microsoft Licence Terms by a Customer;
 - 14.3.3 Any breaches of the IPRs of third parties caused by use of Customer Data or content which is not solely caused by use of the IPR of C2M;
 - 14.3.4 Breaches of data protection law or regulations resulting from C2M storing or processing data on behalf of and in accordance with the instructions of the Partner or its Customers.
- 14.4 Both parties shall comply with their respective duties under relevant data protection laws and regulations.
- 14.5 To the extent that personal data is processed using the Services, the parties acknowledge that C2M is a data processor and the Partner is a data controller and the parties shall comply with their respective statutory data protection obligations. C2M agrees that it will only process personal data on behalf of, and in the name of, the Partner.
- 14.6 The Partner shall ensure that the personal data, which it supplies or discloses to C2M, has been obtained fairly and lawfully and that it will obtain all necessary consents from persons whose data is being processed and registrations with authorities to permit C2M to transfer personal data to third parties pursuant to its obligations under the Agreement.
- 14.7 C2M confirms that it:
- 14.7.1 Will only process data in accordance with the instructions of the data controller; and
 - 14.7.2 Has taken, as well as its subcontractors, licensors and hosts, sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data, having regard to the state of technological development and cost of implementing any measures, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected.
- 14.8 If a third party alleges infringement of its data protection rights, C2M shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

14.9 The parties agree that from the 25th of May 2018 clauses 14.6 and 14.7 of this data protection clause shall automatically be replaced by the DPA in order for the parties to comply with their mandatory obligations set out in the General Data Protection Regulation (“**GDPR**”) which applies to the Agreement from the 25th of May 2018.

14.10 Where C2M collects and processes personal data of the Partner or Customer, as a data controller, when providing the Services to Partner, such collection and processing shall be in accordance with the Privacy Policy.

15. Intellectual Property Rights

15.1 The Partner acknowledges the exclusive right of C2M (and third party suppliers) in and to all IPRs in the Services and all other materials covered by the Agreement. C2M hereby grants the Partner a non-exclusive, non-transferable license to use its IPRs in the Services solely for the purpose of distribution of the Services pursuant to the Agreement in the Territory during the Term.

15.2 The Partner shall submit all of its materials containing C2M's trademarks to C2M for prior approval. Approval shall only be given where, in C2M's opinion, use is appropriate to C2M's market image and status. The Partner remains fully responsible for such materials and their content as well as compliance with all laws in the Territory.

15.3 The Partner may only use C2M's trademarks and domain names in connection with the Services and always in strict accordance with specifications and directions supplied by or on behalf of C2M. The Partner agrees that the ownership of C2M's trademarks and domain names and the goodwill relating thereto shall remain vested in C2M and all use thereof by the Partner shall inure to the benefit of C2M. If requested by C2M, the Partner shall assist C2M to register trademarks and domain names in the Territory, at the expense of C2M. The Partner shall not itself seek to register trademarks or domain names in its own name, which would conflict with C2M's trademarks and domain names. The Partner covenants and agrees to perform all acts reasonably necessary and requested by C2M to maintain and keep the registrations, if any, of C2M's trademarks and domain names in full force and effect in the Territory and take all appropriate steps to prevent any actual or threatened infringement thereof.

15.4 The Partner may provide Services to Customers through a web portal or online marketplace with the Partner's own branding, provided that the Partner shall be wholly responsible for any trademarks used for such branding including any claims of infringement of any third party's trademarks, logos or branding. The Partner shall not alter, obscure or remove any branding or trademarks of third party suppliers of the Services, including Microsoft branding and trademarks which display during access or use of the Services.

15.5 Prior to the termination or expiry of the Agreement, the Partner shall transfer all domain names or trademarks registered in the Partner's name or on behalf of the Partner of C2M pursuant to the Agreement to C2M. Where this is not possible due to local regulations or laws, the Partner agrees to enter into a trustee agreement with C2M to hold the trademarks and domain names on behalf of C2M. C2M will cover all reasonable costs incurred by the Partner in transferring or continuing to hold registrations of such trademarks and domain names on behalf of C2M.

16. Services Localisation

16.1 The Partner shall be entitled to modify the source code solely for the purpose of creating a localised version of Services suitable for the local market for sale to its Customers. The Partner shall not in any other way alter, modify, or interfere with the source code, and all changes made shall be the minimum needed to localise Services for use in the Territory.

16.2 All modifications to the source code shall be owned by C2M. The Partner hereby assigns and transfers to C2M all right, title, and interest in and to the IPRs in the modified source code,

including all related technology and other materials developed in connection therewith, and agrees to sign all necessary documents evidencing such assignment. The Partner also agrees to obtain written assignments of ownership from any third party developers.

- 16.3 The Partner shall have no right to disclose, sell, license, distribute, encumber, or in any way transfer the source code, or any portion thereof, to any third party and will at all times hold the source code in the strictest confidence. The Partner may give access to the source code only to Named Persons who need to access the source code in order to make the modifications permitted hereunder. All such employees and consultants who are given access to the source code must sign, or have signed, a confidentiality agreement imposing confidentiality obligations substantially similar to those set forth in the Agreement. The Partner agrees that it shall keep written records of all persons who have access to the source code, and shall provide such records to C2M if C2M so requests in connection with an investigation of copyright infringement of any Services or for any legitimate business reason. The Partner shall use its best efforts to safeguard the source code and to ensure that no unauthorised persons have access to the source code, and that no persons authorised to have such access (i.e., specified employees and consultants) shall take any action which would be in violation of either their confidentiality agreement or the Agreement if taken by the Partner.
- 16.4 The Partner agrees to send the current version of the Services and any updates in both source and object code form to C2M no less than twice a year.
- 16.5 Any breach of the terms of this clause 16 by the Partner shall be considered a material breach of the Agreement by the Partner. The Partner shall promptly report to C2M any breach of this clause 16 and shall take further steps as may be requested by C2M to prevent or remedy any such breach, at the Partner's cost. In addition, the parties agree that any unauthorised use or transfer of the source code would substantially and irrevocably harm C2M, C2M shall be entitled to seek injunctive and/or other equitable relief in addition to other remedies afforded by the Agreement or by law if the Partner breaches the provisions of this clause 16.

17. Confidentiality

- 17.1 Each party may use the Confidential Information of the disclosing party only for the purposes of the Agreement and must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject.
- 17.2 Either party may disclose the Confidential Information of the other party to those of its employees and agents, or Customers, who need to know the Confidential Information for the purposes of the Agreement, but only if the employee or agent, or Customer is bound by confidentiality undertakings equivalent to those set out in the Agreement.
- 17.3 The parties' obligations to keep information confidential will survive termination of the Agreement.
- 17.4 The obligations of confidentiality under the Agreement do not extend to information that:
- 17.4.1. Was in the other party's lawful possession before the negotiations leading to the Agreement; or
 - 17.4.2. Is, or after the Effective Date, becomes public knowledge (otherwise than as a result of a breach of the Agreement); or
 - 17.4.3. Is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

- 17.4.4. Is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 17.4.5. Is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

18. Warranties

- 18.1 Each party warrants and represents that:
 - 18.1.1 It has full corporate power and authority to enter into the Agreement and to perform the obligations required hereunder;
 - 18.1.2 The execution and performance of its obligations under the Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and
 - 18.1.3 It shall respect all applicable laws and regulations, governmental orders and court orders, which relate to the Agreement.
- 18.2 C2M warrants to the Partner that it has the right to licence the Services.
- 18.3 The Partner shall make no warranties on behalf of C2M and will make no statements or representations that are inconsistent with those provided in the Professional Services Agreement.
- 18.4 Except as expressly stated in the Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

19. Liability

- 19.1 The parties do not exclude or limit their liability to each other for fraud, death or personal injury caused by any negligent act.
- 19.2 The parties shall not be liable for any Consequential Loss arising out of or related to the Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, even if the party was advised of the possibility of such damages.
- 19.3 The parties shall not be liable for any loss of profits (whether direct or indirect) arising out of or related to the Agreement, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- 19.4 Subject to clauses 19.1. to 19.3 inclusive each party's total liability to the other in aggregate (whether in contract, tort or otherwise) for any and all claims relating to or arising under the Agreement, including any indemnity or contribution shall be limited to the total Fees (excluding all taxes) paid by the Partner to C2M during the 12 month period for the Customer in question prior to the date on which any such claim arose.
- 19.5 The Partner shall not raise any claim under the Agreement more than 1 year after: (i) the discovery of the circumstances giving rise to a claim; or (ii) the effective date of termination or expiry of the Agreement.

20. Insurance

- 20.1 The Partner will obtain and maintain with a reputable insurance company for the Term and 2 years thereafter, sufficient insurance to cover its liabilities under the Agreement. On request the Partner shall provide C2M with proof that the insurance required is effective.

21. Non-solicitation

21.1 Unless the parties agree otherwise during the Term and for the period of six months after termination of the Agreement, neither party will induce any person employed by or acting on behalf of the other party in connection with the Agreement to enter the employment of that party. If either party is in breach of this condition, it recognises that the other party will suffer substantial damage and will pay to the other party by way of liquidated damages a sum equal to six months gross salary paid to that person in the immediately preceding six months. This clause shall not otherwise restrict the right of an employee to accept or change employment.

22. Assignment

22.1 No party may assign or transfer its rights under the Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld, however C2M shall be entitled to assign the Agreement to:

22.1.1 Any company in C2M's group of companies; or

22.1.2 Any entity that purchases the shares or assets of C2M as the result of a merger, takeover or similar event.

23. Miscellaneous

23.1 The rights granted to the parties under the Agreement are non-exclusive.

23.2 The Partner's relationship with C2M during the Term shall be that of an independent contractor and nothing in the Agreement will be construed as creating an employer-employee relationship. The Partner shall not have, and shall not represent that it has, any power, right or authority to bind C2M, or to assume or create any obligation or responsibility, express or implied, on behalf of C2M.

23.3 The Agreement constitute the entire agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter of the Agreement.

23.4 Should a provision of the Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.

23.5 No failure or omission by either party to enforce any of the terms and conditions of the Agreement shall be construed as a waiver of such terms and conditions.

23.6 In the event of any inconsistency between the terms of the Reseller Agreement, the Professional Services Agreement, the End User Terms, the Online Conduct Policy, the SLA, the DPA, the Price List, the Privacy Policy and the Microsoft Licence Terms the terms of the Reseller Agreement shall prevail followed by the End User Terms, the Microsoft Licence Terms, the Online Conduct Policy, the Professional Services Agreement, the SLA, the DPA and then the Price List.

23.7 Amendments to, or notices to be sent under the Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post to a party at the address given for that party in the Reseller Agreement. Notwithstanding the aforesaid, C2M may change or modify the terms of the Agreement upon giving the Partner 30 days notice via email. All changes shall be deemed to have been accepted by the Partner unless the Partner terminates the Agreement prior to the expiry of the 30 day period. If the Partner gives notice to terminate solely due to a price increase, C2M can agree at its sole discretion to waive the price increase and the Agreement will continue without the Fee increase being applied.

- 23.8 Excluding non-payment, neither party shall be liable for any delay in performing any of its obligations under the Agreement if such delay is caused by Force Majeure. However, if such circumstances persist for more than 14 (fourteen) days, the non-defaulting party may terminate the Agreement and all monies due to C2M up to the date of termination shall become immediately due and payable. As soon as reasonably practicable after an event of Force Majeure arises, the party affected by the Force Majeure event must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement.
- 23.9 The parties agree that Microsoft corporation is a third party beneficiary to the Agreement in relation to any Microsoft products included in the Agreement. Subject to the aforesaid, nothing contained in the Agreement is intended to be enforceable by any third party pursuant to any rights that such third party may have under applicable law or otherwise and the Contracts (Rights of Third Parties) Act 1999 is hereby specifically excluded.
- 23.10 Each party will pay its own legal, accountancy and other costs arising out of and in connection with the Agreement.

24. Governing Law and Jurisdiction

- 24.1 The Agreement will be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the English courts.

SIGNED on behalf of the parties

By..... on behalf of the Partner

Date.....

By..... on behalf of C2M

Date.....

Schedule 1 – Price List