

Service Description

Provision and Support of Microsoft Online Services
in the “New Commerce Experience” NCE Model
(CSP program)



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1 Preliminary note

- 1.1 As a certified partner of the software manufacturer and cloud provider Microsoft, KUMAVISION provides its customers (hereinafter referred to as the Client or Customer) with cloud services from Microsoft ¹ (online services) within the framework of the so-called Cloud Solution Provider program (CSP program).
- 1.2 For the understanding and correct classification of the service models which can be selected below, the following basics are once again presented first: In principle, there are two forms of IT operation (computing). The "classic" form is that the user has his IT in-house, and it is supported there. The second form is that of so-called "outsourcing", which can be seen in many facets on the market. Substantive for the services under the present contract is the outsourcing in the form of the so-called cloud computing on Microsoft platforms. The special features of cloud computing are primarily that the services are no longer bought but rented. The classic role of the IT service provider (in this case KUMAVISION) has also changed. The IT service provider advises its customers on the selection of services and activates them for them in the Microsoft data centres. In doing so, the IT service provider has a dual role. To the extent that the IT service provider manages the services for the customer, the IT service provider can be seen as the customer's "vicarious agent". On the other hand, the IT service provider for Microsoft handles the customer care (support) and invoicing for Microsoft in its own name and for its own account. What is special about this constellation is, that the IT service provider has only partial direct access to Microsoft's cloud-based applications. Therefore, he cannot directly correct errors that occur in the data centres of the cloud provider. Here he again acts in the role of the customer's vicarious agent, who tries to ensure with the cloud provider that any errors that occur are rectified as quickly as possible.
- 1.3 The CSP program is the standard procurement channel for all Microsoft online services via a Microsoft Partner and is continually being expanded to include new products. These can be either licenses for Microsoft standard software such as Microsoft Office 365 or Microsoft Dynamics 365, or the so-called Microsoft Azure services. The Microsoft Azure Cloud offers a cloud platform for storage space and processing power with easy access options for administrators and end users. In addition, there is a continuously growing range of combinable Azure services based on the principles of "Infrastructure as a Service" (IaaS), "Platform as a Service" (PaaS) and "Software as a Service" (SaaS).
- 1.4 In the "New Commerce Experience" (NCE) model here, KUMAVISION as CSP is entitled to offer its corporate customers the use of the Microsoft online services described above in its own name and for its own account.
- 1.5 The provision of services within the scope of the Microsoft online services is generally carried out via the following contractual relationships: The Microsoft Customer Agreement - (<https://www.microsoft.com/licensing/docs/customeragreement>) governs the contractual relationship between Microsoft and the client of this agreement (user of the Microsoft online service). In the overall context of the planned installation, Microsoft is thus the vicarious agent of the client by providing the services listed in the customer agreement between Microsoft and the client. KUMAVISION will inform the Client of this contract of its obligations arising from Microsoft's terms of use and licencing conditions.
- 1.6 When subscribing to an online service through a Microsoft subscription program such as the CSP program, the terms for using the service are governed by Microsoft's product terms. These terms are updated frequently and can be found here: <https://www.microsoft.com/licensing/terms/welcome/welcomepage>

¹The trademark rights for Microsoft products and names belong exclusively to Microsoft. Where reference is made herein to Microsoft, this is solely for editorial clarification. The contracting parties shall observe the Microsoft Trademark & Brand Guidelines.

- 1.7 The product provisions are incorporated by reference into the agreements that govern the use of Microsoft products and professional services by Microsoft's customer (the client of this contract).
- 1.8 For the Microsoft CSP program, KUMAVISION represents a so-called distributor in the "indirect" model. The distributor supports the IT service provider (also referred to there as the reseller) in the distribution and operation of the CSP products. The reseller may use the infrastructure created by the distributor for this purpose. In the "indirect" model it is agreed between the parties to this contract that the distributor is involved as support for the IT service provider. In the event that a contract processing agreement (CPA) is concluded between the IT service provider and the client, the distributor shall be named in the CPA as a sub-processor of the IT service provider. The client does not enter into any contractual relationship with the distributor under this contract.
- 1.9 With this document, the contracting parties regulate the type and scope of the services for the provision of cloud services, i.e. the procurement of the rights of use required for the use of the cloud-based services for a limited period of time, the acquisition of software products (apps) via the Microsoft platform AppSource (SaaS) and the support of the customer with regard to the Microsoft online services and apps named in the offer/order and used by him, as well as the corresponding remuneration.

2 Commissioning, subject matter and rights of use

- 2.1 By ordering the cloud services, the client acquires the right to the provision and support of Microsoft online services by KUMAVISION as contractor. The contractual online services (subscriptions) and the monthly remuneration owed for them are listed in detail in the offers/orders that refer to this contract.
- 2.2 KUMAVISION is a registered Microsoft partner. This is recorded in the Microsoft Partner Portal and can be viewed there. On the basis of the Microsoft Partner Agreement, KUMAVISION is obliged to act in accordance with the Microsoft Code of Conduct, also vis-à-vis its clients, and in particular to comply with the anti-corruption provisions.
- 2.3 KUMAVISION is the client's first point of contact for enquiries relating to the IT infrastructure that KUMAVISION manages.
- 2.4 By activating the licences, the Microsoft Customer Agreement is concluded between the client and the respective group companies of the Microsoft Corporation (hereinafter referred to as Microsoft). The exchange of the contract information required for this takes place between the client and KUMAVISION. The online services offered on the basis of this contract are in particular those of Microsoft Ireland Operations Limited. These are provided on the basis of the current version of the Microsoft Customer Agreement at the time of the order.
- 2.5 **Annex 1** lists the sources of supply (through LINKS) for the Microsoft Customer Agreement, as well as for the applicable provisions for the Microsoft online services. The use, scope, nature and quality of the online services provided by Microsoft are governed solely by the terms listed in **Annex 1**. Product descriptions and representations in test programs are descriptions of performance but are not guarantees.
- 2.6 Data storage and/or hosting takes place in the Microsoft data centres. A list of all the existing data centre locations, as well as all the available information about these data centres, can be viewed at the Internet addresses listed in **Annex 2** (e. g. <https://azure.microsoft.com/en-us/global-infrastructure/>). The client decides alone and independently in which Microsoft data centres it would like to have its data storage set up.
- 2.7 The client receives access to the online services and the documentation. The documentation is delivered as provided by Microsoft. The delivery of an online documentation, even if it is in the English language, is in accordance with the contract. The client has no claim to being provided with a source program.

- 2.8 A change in the functionality of an online service, e. g. through new versions, is possible at any time, but is not obligatory. These changes are made exclusively by Microsoft and are not at the disposal of KUMAVISION.
- 2.9 The services of KUMAVISION in connection with the rental of the online services, only include software installations, client-individual adaptations and customising, training and other services and work performances if this is agreed separately and in writing between the contractual parties.
- 2.10 For the term of the contract, the client shall receive a non-exclusive and non-transferable right of use for the Microsoft online services booked by the client on the basis of licences.
- 2.11 Microsoft retains sole intellectual property rights to the online services provided by KUMAVISION and distributed by Microsoft.
- 2.12 The applicable provisions for the Microsoft online services, together with their respective sources of supply (LINKS), are set out in **Annex 1**.
- 2.13 The so-called "Microsoft Customer Agreement" can be viewed at <https://www.microsoft.com/licensing/docs/customeragreement> and applies directly between the client and Microsoft. In the following, the Microsoft Customer Agreement and all other applicable product provisions of Microsoft are classified under the generic term "Terms of Use and Licence Conditions". These can be viewed and downloaded via the website <https://www.microsoft.com/en-us/licensing/product-licensing/products> or a follow-up website. The list is updated regularly. By concluding the contract, the client declares that he is aware of Microsoft's terms of use and licence conditions and accepts their validity.
- 2.14 The licensor Microsoft, the distributor and KUMAVISION are entitled to have the proper use of the online services audited by the client. The audit may only be carried out by an independent expert who is bound to secrecy vis-à-vis the licensor and KUMAVISION, and who may only disclose information if and to the extent that licence violations exist and to the extent that this is necessary for asserting licence violations. Two (2) weeks' written notice must be given for the audit. When examining and carrying out the audit, care must be taken that no personal data of third parties are transmitted or otherwise become known to the expert during his audit. In all other respects, the client is obliged to provide the expert with the information necessary for carrying out the audit.
- 2.15 Microsoft's terms of use and licence conditions apply accordingly to cloud services and software products (including apps from the Microsoft AppSource) of other manufacturers and service providers, insofar as no special regulations exist for these. Insofar as special regulations exist, these shall also become the subject matter of the contract.
- 2.16 If the Client commissions KUMAVISION to obtain KUMAVISION apps or apps of KUMAVISION partners on the Microsoft AppSource platform, the order always includes the authorisation of KUMAVISION to install and activate these apps for the Client on behalf of and for the account of the Client, in particular to enter the client/customer data required for the use of the apps as part of the installation, monetisation (as well as the necessary precondition for the possibility to use the free trial phase) and activation process. For other (so-called "third-party") apps, KUMAVISION can carry out the purchase and installation in the aforementioned sense on behalf of the client but cannot take any further steps (in particular for monetisation and release for use). In the event of the purchase, installation, use and function of third-party apps or the development of extensions by third parties or the client, KUMAVISION can neither offer a guarantee for the overall work nor assume liability in any other way.

3 Guidance on the part of KUMAVISION regarding the applicable provisions of Microsoft

- 3.1. KUMAVISION does not provide legal advice to the client. However, when providing advice on the selection of software and providers, KUMAVISION draws the client's attention to the provisions that apply directly between the client and Microsoft.
- 3.2. KUMAVISION, as a Microsoft partner, shall obtain the client's consent with regard to the Microsoft Customer Agreement before KUMAVISION orders Microsoft products and services for the client.
- 3.3. KUMAVISION draws the Client's attention to the fact that the provisions of the Microsoft Customer Agreement are subject to Irish law and in part deviate considerably from the provisions of the German Civil Code (BGB). This does not apply conclusively, but in particular to the warranty and liability.
- 3.4. Upon conclusion of the contract, the client warrants that it has taken notice of, understood and accepted the terms and conditions of the Microsoft Customer Agreement together with the Annexes and Product Terms, in a manner that is comprehensible to it.
- 3.5. If Microsoft amends the terms of the Customer Agreement together with the Annexes or the Product Terms, the client accepts the new applicable versions at the latest when renewing or amending a subscription.
- 3.6. The acceptance of the Microsoft Customer Agreement by the client is documented by KUMAVISION in the Azure Active Directory Tenant (which serves as the basis for each CSP subscription), in order to create a binding verifiability and, in particular, transparency for Microsoft. For this purpose, the following details of the client are filed: First name, surname, e-mail address, telephone number (optional) and date of acceptance.
- 3.7. Licences granted on a subscription basis shall expire at the end of the relevant subscription period unless renewed.
- 3.8. Microsoft currently offers three (3) subscription models, about which KUMAVISION has provided comprehensive information. Essentially, these are the three (3) following models:
 - Monthly cancellable subscriptions. These do not grant a long-term price guarantee and are more expensive than annual subscriptions. However, they offer the greatest possible flexibility.
 - One-year subscription with price guarantee.
 - Multi-year subscription with price guarantee.
- 3.9. Annual subscriptions are bindingly booked for the agreed term. There will be no refund for unused subscriptions.
- 3.10. An increase in the number of licences used is also possible within the annual subscriptions. It is also possible to upgrade licences (e. g. from the current E3 to E5). A downgrade is not possible within the subscription period.

4 Availability

- 4.1 The availability of the cloud services is governed by Microsoft's terms of use and licencing.
- 4.2 KUMAVISION can ensure an annual average availability for the functionalities of the online services to the extent that this is provided by Microsoft as the cloud provider. KUMAVISION has no influence on the availability of the cloud provider.
- 4.3 The client acknowledges that the availability is not a direct obligation of KUMAVISION. On the contrary, KUMAVISION procures the services of the service provider Microsoft on its terms and in accordance with its applicable availability agreements
- 4.4 Microsoft may limit the number of online services or licences available and/or discontinue distribution. KUMAVISION has no influence on this and KUMAVISION is therefore not at fault if services are restricted or discontinued.
- 4.5 For the availability of the technical infrastructure, the agreements on the service level for Microsoft online services apply in their current version at the time of concluding the contract.

5 Maintenance work and support

- 5.1 Maintenance work on the Microsoft cloud platforms is planned and carried out by Microsoft. The customer has to inform himself independently about the maintenance windows of Microsoft.
- 5.2 KUMAVISION itself does not perform any maintenance work on the Microsoft cloud platforms.
- 5.3 If maintenance work is carried out by Microsoft, KUMAVISION will inform the client of this, insofar as KUMAVISION itself has been notified of the maintenance work.
- 5.4 KUMAVISION shall not itself carry out any maintenance work on the Microsoft online services without having previously coordinated this with the Client.
- 5.5 In order to ensure the highest possible availability of the Microsoft online services and, if necessary, a rapid processing of maintenance and support cases, KUMAVISION regularly checks any notifications in the Partner Center and coordinates these with the client. Any remuneration incurred for this is regulated in the order between the client and KUMAVISION.
- 5.6 KUMAVISION is the client's central point of contact in the event of faults. KUMAVISION shall provide the client with troubleshooting services in connection with the Microsoft online services, within the scope of its possibilities, against payment and, in the event of the existence of an effective support contract, in accordance with the provisions regulated in the support service description.

6 Remuneration

- 6.1 The remuneration for the cloud services is regulated in the offer / order.
- 6.2 KUMAVISION is entitled to increase the remuneration with a notice period of 30 days, if there are price increases on the part of Microsoft. License-based prices are fixed by Microsoft for the duration of a subscription. Usage-based prices can change on a monthly basis. KUMAVISION will inform the customer about any planned price increase one month before the adjustment. The customer shall then have the right to cancel the subscription concerned within the applicable notice periods. Price adjustments in the form of price reductions are possible at any time and without prior notice.

7 Data Protection

- 7.1 The client is the responsible party for the assessment of the legal admissibility of the processing and use of personal data by KUMAVISION carried out within the scope of the contractual relationship, with regard to all therelevant data protection laws.
- 7.2 Insofar as personal data are processed by KUMAVISION pursuant to an order within the scope of the cooperation, this processing shall take place exclusively within the scope of the contractual agreements and the specific individual instructions of the client. The parties to this case shall separately conclude, or have already concluded, an agreement on the commissioned processing in accordance with Art. 28 (3) DSGVO (General Data Protection Regulation).
- 7.3 Any processing of personal data by Microsoft and/or by third parties involved in the processing (in particular distributors/cloud service providers) shall be carried out on the basis of the applicable data protection provisions of Microsoft, which are regulated in particular in the Data Protection Supplement to the Microsoft Products and Services - <https://www.microsoft.com/licensing/docs/view/Microsoft-Products-and-Services-Data-Protection-Addendum-DPA> - or on the basis of the provisions for the commissioned processing of personal data of the respective third party involved.
- 7.4 Microsoft shall provide the client with a Data Processing Order Agreement and the updated EU Standard Contractual Clauses (2021) within the scope of the aforementioned provisions. Any deviating or supplemental data protection agreements that may be required, are to be negotiated directly between the Client and Microsoft.

8 Terms of the online services

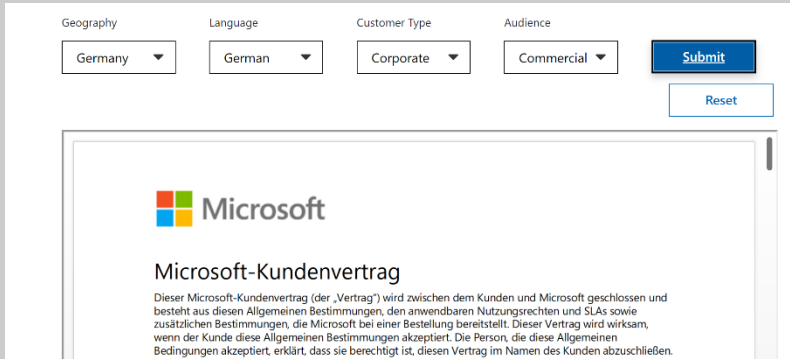
- 8.1 The terms and notice periods of the individual online services ordered are governed by Microsoft's applicable product descriptions and the subscriptions ordered.
- 8.2 Unless a term is agreed in accordance with the product description, the term shall be indefinite. As a rule, unlimited online services can be terminated at any time.
- 8.3 In the case of online services with a minimum term, the termination is permitted for the first time at the time of expiry of the minimum term.
- 8.4 Insofar as an online service is not terminated in compliance with a notice period existing in accordance with the product description, it can be extended manually by KUMAVISION or automatically. KUMAVISION and the client will agree on the form (manual or automatic) of the extension at an early stage.
- 8.5 In the event of extraordinary termination, the client's subscriptions to Microsoft shall remain valid, also beyond the end of this contract until the expiry of a term agreed in the subscription.

9 Subsidiary Agreements

- 9.1 Should one or more provisions of this document be or become invalid or incomplete, this shall not affect the validity of the remaining provisions in case of doubt.
- 9.2 In all other respects, the KUMAVISION GTC shall apply in accordance with **Annex 3**.

10 Annexes

- **Informational:** offer / order, if applicable
- **Annex 1:** Applicable provisions for Microsoft online services

Description	Internet address
<p>Microsoft Customer Contract</p>	<p>https://www.microsoft.com/licensing/docs/customeragreement</p> <p>Please select the country setting and the language here</p> 
<p>Data protection supplement to the Microsoft products and services</p> <p>General landing page for the applicable regulations for Microsoft online services</p>	<p>https://www.microsoft.com/licensing/docs/view/Microsoft-Products-and-Services-Data-Protection-Addendum-DPA</p> <p>https://www.microsoft.com/licensing/terms/welcome/WelcomePage?programMoniker=MCA</p> <p>In particular, the product terms and conditions as well as other legal provisions are available under this link.</p> <p>The provisions shall apply in their currently published version at the time of concluding the contract. In the event of a renewal of individual subscriptions, the version published at the time of renewal shall apply.</p>

- **Annex 2:** Link list of Microsoft data centres

Description	Internet address (link)
Azure cloud services per location or region	https://azure.microsoft.com/de-de/overview/datacenters/
Global data centre Microsoft	https://azure.microsoft.com/de-de/global-infrastructure/geographies/#overview

- **Annex 3:** KUMAVISION AGB (GTC) in the respective latest version, currently available under the following link: <https://kumavision.com/en/impressum>